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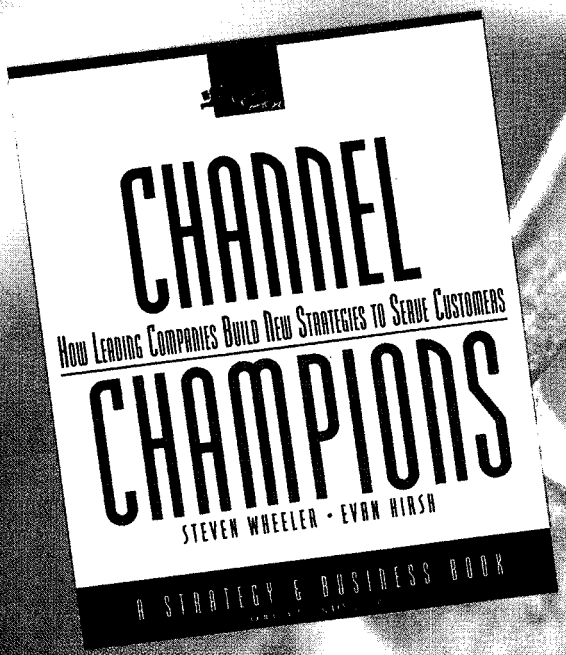
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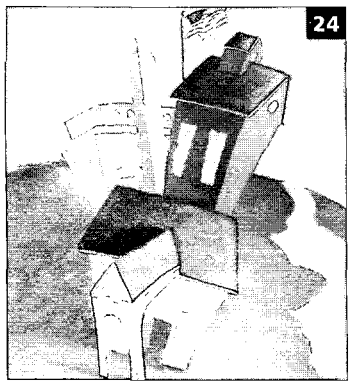

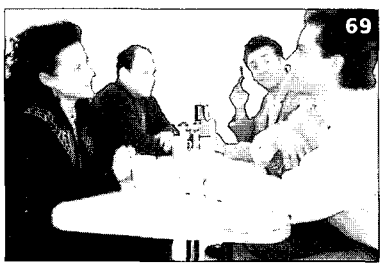

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High-Tech's Starr Report

The consequences of a software culture war

By Virginia Postrel

On November 5, U.S. District Court Judge Thomas Penfield Jackson released the high-tech version of the Starr report: the finding of facts in the antitrust case against Microsoft. It is as angry and, in its own way, as lurid a document as Kenneth Starr's account. And it is also the product of a culture war.

Grassroots techies—the mostly unknown people who write code and start companies that don't make the headlines—hate, loathe, and despise Microsoft. At technology conferences, it is the devil, or the guaranteed laugh line. Its products are mocked, its business practices booed.

"The quality of their software is terrible in itself, and it's contagiously terrible," says a former Microsoft programmer, now with a Bay Area Internet start-up. "If you write for a Microsoft platform, it becomes the Tar Baby of bad code. It's really demoralizing to work with it." This developer doesn't want the government meddling in the software business. But, he says, "Microsoft is the Skokie Nazis of free markets."

Microsoft has its defenders, of course. They argue that the craftsman's view of quality is too narrow. Programmers do not value the same things consumers do. "It drives the Valley nuts that the market may want something—a standard platform for applications, backward compatibility, low cost, ease of installation, bundled products—that conflicts with their notion of what is technologically superior," says another programmer, who frequently gets into arguments with colleagues by defending Microsoft's success.

This broader view of quality notes, for instance, that Microsoft got its operating system dominance largely because Windows came bundled with relatively inexpensive computers, thanks to the fierce competition among companies using Intel microprocessors. (See "Creative Insecurity," January 1998, available with other Microsoft-related material at www.reason.com/microsoft99.html.) Compared to the Macintosh package, priced to maintain 50 percent gross profit margins, consumers found the less technologically elegant Wintel combination a bargain. And by providing a standard, Microsoft made it possible for personal computing, and all sorts of auxiliary devices, to flourish.

This culture war is a civil war—the most vicious kind—among people who care about technological creativity and progress. Both sides say they're out to protect "innovation."

For Microsoft's opponents, that means blocking the company's ability to use its Windows licenses to crush upstart competitors or chill ideas that might threaten its profits. "Microsoft has demonstrated that it will use its prodigious market power and immense profits to harm any firm that insists on pursuing initiatives that could intensify competition against one of Microsoft's core products," Judge Jackson concludes. "Microsoft's past success in hurting such companies and stifling innovation deters investment in technologies and businesses that exhibit the potential to threaten Microsoft."

Microsoft, for its part, argues that it can't innovate if it has to get government permission to add features to Windows. The definition of an "operating system" is bound to evolve with customer demands and technological possibilities. And Microsoft clearly doesn't want to become a lawyer-bound bureaucracy like the IBM of Microsoft's formative years.

The problem with using antitrust law to protect innovation is that the courts take a static view of the dynamic marketplace. Thus, Jackson dismisses potential competitors to Microsoft, no matter how promising, on the grounds that they are not significant at this particular moment.

Now that the high-tech community has its Starr report, the consequences of using the law to fight a culture war are beginning to dawn on Silicon Valley. Assuming Microsoft doesn't settle the case with the Justice Department and 19 ambitious state attorneys general, the judge will rule on the law and penalties. He will start redesigning the software business, creating a de facto federal "Department of Microsoft." It will be run not by genius programmers but by lawyers dedicated to properly slow procedure. The civil suits will start, using the judge's findings as proof of damage. And the attorneys general will go looking for their next high-tech target.

"As much as the Valley would love to see Microsoft given its comeuppance, it's profoundly ambivalent about Washington being involved," Palo Alto–based futurist Paul Saffo told *The Washington Post* a week before the ruling. "If Washington can't figure out how to handle a presidential affair, I guarantee you they're not going to be able to handle technology."

What a lot of technologists would like is pretty much what happened with that presidential affair: official confirmation that Microsoft has been bad, bad, bad, with no serious legal consequences that might disrupt today's extraordinary prosperity and possibility.

As the Republicans learned during impeachment, culture wars unleash government powers that scare the public. A Gallup poll taken November 4–8, a period which included the judge's report, found that 68 percent of Americans have a favorable opinion of Bill Gates, compared with 19 percent unfavorable. Forty-five percent said they side with Microsoft in the trial, and 54 percent said they oppose any government breakup of the company.

These respondents aren't techies or antitrust lawyers. They just see a successful company and an entrepreneurial hero under attack. As with Bill Clinton, they are unmoved by videotapes in which Bill Gates looks like a squirmy liar.

Deep cultural disagreements also motivate people to change the world without government help. A few years ago, the technology community was terrified that

Microsoft would suck all the fun and adventure out of the high-tech game. People feared it would squelch the Internet's wonderful diversity and openness and force closed standards and endlessly mediocre products on the world.

But Web sites have not adopted Microsoft standards and excluded others; even Jackson does not expect them to. The acquisition of Netscape by America Online, the largest Internet service provider, further reduces the chances. As Jackson notes, "AOL was interested in keeping [Netscape's] Navigator alive in order to ensure that Microsoft did not gain total control over Internet standards."

The Internet has also become an important way to deliver new applications software, further eroding Microsoft's influence. Instead of software that comes in a box and runs on Windows-based machines, companies are selling software as specialized Web-based services. Microsoft still "controls the desktop" and influences PC vendors, but the effects of that control on consumers are diminishing.

Money is pouring into the software business, with start-ups at their highest valuations ever. According to PricewaterhouseCoopers, in the second quarter of 1999 "software and information" drew in $2.1 billion in venture capital, or 28 percent of total investments.

Meanwhile, hardware prices are plummeting. For desktop computers, this means Microsoft's license fees are a more significant portion of vendors' costs, making them more likely to squawk. Traditional PCs face competition from specialty products like Palm Pilots and from the servers that provide the nodes in computer networks. Microsoft's Windows CE hasn't done too well in the specialty-device market, and its Windows NT faces strong competition for server customers.

Among those competitors, the cheapest and most interesting is Linux, the "open source" operating system developed for free by hackers working worldwide. The system has about a third of the server market, nearly as much as NT, and its share is growing. Red Hat Inc., which sells a version of Linux for less than $50, went public in August, raising $83 million; on its opening day, the company's market capitalization shot to more than $3.4 billion. Today, Linux is mostly a server operating system—irrelevant in the judge's static view of the world—but it is slowly gaining a foothold in the desktop market.

Linux has become a high-profile weapon in the anti-Microsoft crusade. At stake is what Linux evangelist Eric Raymond calls a "quasi-political" question: "Will the Internet culture tolerate single-vendor monopolies on critical infrastructure or not?" The answer appears to be no.

There's a popular saying that the Internet interprets censorship as damage and routes around it. Desire and innovation will trump policy, the argument goes, as clever programmers circumvent controls. This may or may not be true of censorship—cyber-utopians tend to discount the physical terror of police states—but it may well be true of Microsoft's dominance. The profit motive is strong in Silicon Valley, but so is the desire to beat up the bad guys in Redmond. It's just too bad they got the lawyers involved.

Editor's Note

When I was in college, I wanted to be editor of REASON when I grew up. It was an impractical ambition, especially since the magazine was located in Santa Barbara, way off any journalist's normal career path. So, being the practical product of the economically stressful 1970s, I became a business journalist, working for *The Wall Street Journal* and *Inc.*

Then, through an amazing coincidence, my husband got a job in Los Angeles just as REASON moved here in 1986. I went to work at the magazine, and in July 1989 I got my wish.

Four months later, the Berlin Wall fell, and nothing in political life has been the same since. It has been a fascinating decade, and REASON has been on the cutting edge of many of its most important stories.

In 1990 alone, REASON delved into the ideology of the resurgent green movement, ran the first national article on the excesses of the anti-date-rape crusade on college campuses, and exposed the ACLU's dwindling interest in free speech, helping to turn that organization around.

Our January 1991 cover story explored the threat of Internet regulation, explaining what the Net was and why it mattered.

Through the 1990s, REASON was a voice of "dissident feminism," upholding the equal dignity of both sexes and supporting the rights of individuals against a government that had gone mad over sexual harassment. We opposed the expansion of law enforcement powers during the Bush and Clinton administrations. By the end of the decade, Waco and Monica had drawn many Americans to our side.

Back then, the political classes were pushing a plethora of schemes—to manage high-tech businesses with industrial policy, to stop corporate restructuring, to block immigration, to nationalize health insurance—that would have made today's prosperity impossible. By December 1995, those schemes had mostly failed, and we could run Michael Cox and Richard Alm's cover story, "The Good Old Days Are Now."

In the second half of the decade, we've concentrated more on big-picture thinking, running articles like Brink Lindsey's February 1996 essay on the evolution of the workplace, Lynn Scarlett's May 1996 brief for a new environmentalism, numerous explorations of artistic and cultural dynamism, and various articles derived from my book, *The Future and Its Enemies.* We've beefed up our science coverage, taking it in more philosophical and future-oriented directions.

Over the past 10 years, REASON has won recognition and converts, from television journalist John Stossel to high-tech CEO T.J. Rodgers. We've been a four-time finalist for National Magazine Awards, the industry's highest honors. We opened a Washington office, established an intern program, created a rich online presence, supported editors' books and outside articles, and learned to operate as a "virtual" organization with staff around the country.

It's been a great decade. But as the new century dawns—and I turn 40—I'm stepping down as editor to write full-time. REASON has generously created the position of editor-at-large for me, and I will continue to write a column in the magazine. Beginning with our April issue, however, Nick Gillespie will succeed me as editor-in-chief. Nick is brilliant, talented, and dedicated to the magazine and its larger cause. I'm confident that REASON can look forward to even better days ahead.

—Virginia Postrel

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Boom and Gloom

Accentuating the negative in an age of plenty

By Nick Gillespie

Every party needs a pooper, even the overwhelmingly robust and upbeat shindig that is end-of-millennium America. In the broadest terms possible, things are going pretty damn well, and the future looks pretty bright, too.

The economy has been nothing less than miraculous. Inflation appears relatively stable, while buying power and overall compensation for virtually all segments of the population are growing. According to the Census Bureau, poverty is at its lowest rate in 20 years, and median household incomes are at an all-time high. Home ownership hovers at the historic high of around 67 percent while unemployment shrinks below supposedly "frictional" levels—despite an influx of welfare recipients once thought to be unemployable. Between 1991 and 1997 (the latest year for which there are full data), the total crime rate dropped almost 17 percent, while violent crime reached its lowest point in a decade. More kids than ever are going on to college (two-thirds, according to *American Demographics* magazine), and the birthrate for unmarried teens is dropping steadily.

So what's the response of America's political and intellectual classes to such generally good times? A sinking feeling, mostly, and a somewhat desperate search for the mist-shrouded iceberg that will sink us all.

To wit, a September 13, 1999, article in *National Review* about sex and teenagers: "For the first time in decades, more than half of America's high-school students described themselves as virgins," writes Amy H. Holmes of the Independent Women's Forum. "The rate of sexual activity among 17-to-19-year-old boys in urban areas declined from 75 percent in 1979 to 68 percent in 1995. Over the same period, the proportion of young men who approved of nonmarital sex fell from 80 percent to 71 percent." After granting that "the statistics may be improving," Holmes nonetheless asserts that "sexual practices among teenagers are becoming increasingly dehumanizing," a conclusion supported only by a few dubious anecdotes about ostensibly disturbing new trends that would hardly seem novel to anyone who has come of age since the publication of *Tropic of Cancer.*

Declinists can barely stomach the idea that something other than imminent ruin awaits the country unless their prescribed course of action is enacted but fast; progress is inevitably measured not in terms of how far we've come but only by who or what has been left behind. Hence, presidential hopefuls Pat Buchanan and Bill Bradley continue to hammer away at themes such as corporate downsizing and the export of "good-paying" jobs overseas. These complaints were just barely plausible in the low-growth early '90s and are simply nonissues in today's economy.

Meanwhile, left-leaning critics such as Susan Faludi bemoan "union-breaking" as an indicator of an ugly new world of workplace dislocation. Current union membership is 14 percent of the work force, down from a high of around 30 percent in the mid-'50s. Such numbers actually reflect

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not some new wave of sinister Pinkerton-like activity but a shift away from the assembly-line drudge work that gave rise to unions in the first place. But you wouldn't know it from the self-styled defenders of the working man.

On the right, the focus is less on imagined economic despair and dislocation than on perceived and potentially irreversible moral dissipation. "Even during a time of record prosperity, many Americans believe that something has gone wrong at the core," writes former drug czar William J. Bennett in his updated edition of *The Index of Leading Cultural Indicators*, which documents that the '90s have in fact been something other than a headfirst slide into anarchy. In a *Wall Street Journal* article, fellow conservative Robert Bork raised his eyebrows at what he called Bennett's "newfound optimism about the direction of American culture" and contended that there is "no excuse for overlooking the very real and degenerate state of much of our politics and culture."

Why do such folks feel a need to always accentuate the negative, often to the exclusion of any positive developments? For politicians, especially those not yet in power, the impetus is fairly obvious and transparently self-interested. Crisis and dislocation are an office seeker's best friend, as a beleaguered Al Gore no doubt understands better than anyone else seeking the White House.

Back during the 1992 presidential campaign, Gore benefited from just such a strategy when he and Bill Clinton argued passionately—if ludicrously—that the U.S. economy was in its worst shape since the Great Depression. Now, as the number-two man in an administration that has coincided with a historic economic expansion, the vice president seems unsure of how to use such good news to his own advantage.

For many intellectuals—a term that covers a wide range of social critics, commentators, and writers of varying degrees of sophistication—the reasons for persistent declinism are more sundry and less clear-cut. Intellectuals tend to define themselves against the vulgar crowd, and there is a long tradition in America of self-declared alienation from the mainstream they seek to influence. "I feel I am an exile here," wrote Herman Melville, a line that continues to resonate with figures as disparate as the Christian right's Paul Weyrich and the far left's Noam Chomsky. If the American people tend to be optimistic about the future—and all indications suggest they are—then by definition an intellectual must offer a darker vision of things, or else risk being unmasked as unworthy of the designation.

That oppositional stance is compounded by what historian Richard Hofstadter identified in *Anti-Intellectualism in American Life* (1963) as the self-defeating "hunger...for special deference" evinced by many intellectuals in a democratic society. Even as they recognize the relative freedom and opportunity afforded them by an open society, argued Hofstadter, intellectuals want to be appreciated as a breed apart. In a relatively egalitarian society, it has never been easy for intellectuals to gain and maintain special status, and many have resented having to sell their thoughts in a marketplace of ideas not markedly elevated from the one for consumer goods and services.

While at times captivated by an "expert"—whether a Harvard professor or someone like Ross Perot—with a perfect plan, Americans more usually evince healthy skepticism toward authority of all sorts, a tendency that has been waxing strongly over the past few decades. After all, generally wealthier and better-educated individuals feel more and more comfortable asserting control over their own lives in all their particulars. Like doctors, priests, and even stockbrokers, politicians and intellectuals have an increasingly weak hold over the public's mind. They are likely to confuse their relative decline in status with a larger social breakdown, rather than understanding it as a decentralization of power toward individuals.

Such a shift does not destroy political or intellectual authority. It alters the dynamic between professor and student, so to speak, to one between equals—a leveling trend that, come to think of it, may be one of the reasons things have been going so well.

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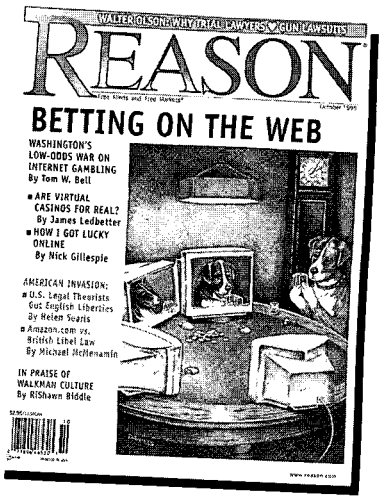

Some Bets Are Off

As someone who has always received high ratings from libertarian groups for my voting record, I was disappointed with your recent feature on Internet gambling and my legislation to stop it ("Gambler's Web," October). Reasonable people can certainly disagree on the subject, but your lead story unfairly impugned my motives and contained arguments that are belied by the facts and are of questionable adherence to libertarian principles and logic.

Author Tom W. Bell cynically ascribes the interest of elected officials in enforcing gambling laws on the Internet to a love of tax revenue from land-based casinos and political contributions from their owners. Had he checked my record, he would have found that I don't like those taxes or government's reliance on the revenues they generate and I don't take money from gambling organizations. I have long opposed state-sponsored gambling and recently supported an effort to repeal the lottery in my state. So argue the merits of your position, Mr. Bell—don't try to win by slyly impugning my motives (inaccurately at that!).

I've also never misrepresented my bill as a "mere update of the Wire Act." That's only half of what it does—ensuring that law enforcement will retain the ability to prosecute the same sports gambling crimes in the future that it does today. My bill also addresses the enforcement gaps in nonsports gambling on the Internet—gambling that violates the law in virtually every state but which (because cyberspace does not recognize state boundaries) can only be enforced only at the federal level. The state attorneys general are considered pretty good federalists, resisting attempts at federal "power grabs." Yet they recognized the necessity of federal assistance in this area and asked me to introduce my legislation.

Ironically, Mr. Bell also criticizes my legislation because it doesn't prohibit enough gambling but contains what he calls "loopholes" that allow some forms of gambling to continue in the electronic arena. Due to the complexity of gambling laws in the nation and the fact that my bill attempts only to prevent the expansion of gambling rather than rolling back existing practices, such provisions are necessary. I don't like them; does Mr. Bell? If so, then he's being hypocritical for criticizing my bill. If not, why does he want to stop betting at Churchill Downs but not on the Internet?

After fretting about the effect of my legislation, Mr. Bell postulates that it won't work—that jurisdictional and technological problems will prevent effective enforcement. It is not the purpose of the bill to gain jurisdiction over the operators of offshore casinos; rather, the intent is to stop the illegal activity from being conducted in the United States by shutting down access to illegal gambling Web sites. That may not always be easy, but when it is technically feasible, Internet service providers must do so.

Finally, Mr. Bell makes the astounding claim that Internet gambling is in fact beneficial to society, helping to get people out of smoky casinos, where they are plied with liquor and encouraged to keep betting, and into cybercasinos, where help for gambling addicts is just a "click" away. Leaving aside the speciousness of bragging about which form of harmful activity provides the best information about how to avoid doing it, experts agree that Internet gambling exacerbates the problems of conventional gambling because it removes the barriers to addiction. Its ease of access and repetition, and its privacy and, hence, lack of societal stigma, make electronic gambling what one professor has called "the crack cocaine of gambling."

Experts have testified that youth gambling will soon rival drug abuse as the biggest problem facing our children. Mr. Bell argues that cybercasinos are better equipped to check the age of participants but then quickly admits that Internet gambling will "marginally increase the chances that some kids will gamble." Amazingly, he argues that we should accept this outcome due to the benefits he claims Internet gambling will bring, such as movies on demand and better, more honest, and more competitive gambling. No thanks.

But the most telling point is how pleased Mr. Bell is that Internet gambling allows people to "escape the grip of merely local legislation"—in other words, to break the laws their fellow citizens have enacted. Principled people who wish for unlimited opportunities to gamble, or to do anything currently unlawful, should seek to convince their fellow citizens to change the law, not break it.

Sen. Jon Kyl (R-Ariz.)
Washington, D.C.

Tom W. Bell replies: I certainly agree with Sen. Kyl that opinions about Internet gam-

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bling differ, and rightly so. Reasonable people base their opinions on facts, however. I thus suggest that Kyl worry less about what he thinks my article implied and more about what it actually said.

It nowhere attempted to diagnose Kyl's motives for authoring the Internet Gambling Prohibition Act. His particular motives did not matter to the analysis. Whether good or bad, they inspired a bill that protects the incumbent gambling industry from upstart Internet competitors. Regarding that, the article's central claim, Kyl remains notably silent.

Does Mr. Kyl regret that strange bedfellows hijacked his pure-hearted political crusade, turning it into a special-interest junket? Again, it does not matter. It matters only that Kyl's intentions launched this particular road trip to ruin. He cannot escape responsibility by claiming that he meant well.

Kyl should pay more attention to what he himself has said, too. He has on several occasions defended his Internet Gambling Prohibition Act solely in terms of updating existing law. Take, for instance, his comments during the Senate Judiciary Committee markup of his bill on June 17, 1999: "The advent of the Internet, a communications media not envisioned by the Wire Act, requires enactment of a new law to address the activities in cyberspace. The essence of the bill is that it bans gambling on the Internet, just as the Wire Act prohibited gambling over the wires."

As Kyl now admits, however, his Internet Gambling Prohibition Act does a great deal more than just update the Wire Act. His bill would for the first time ban gambling-related transmissions that do not cross state lines or that travel between states which allow the gambling in question. Kyl's bill would also redefine "gambling business" to include anyone who wins more than $2,000 in one day. In short, his bill would vastly expand federal power in an area traditionally left to the states.

Of course some state attorneys general welcome Kyl's bill; it gives them concurrent authority to prosecute Internet gambling. Their opinions matter little, at any rate, because they are not elected legislators. Nor does Kyl represent the state attorneys general—unless, of course, this senator from Arizona has become the senator for other politicians.

Kyl should perhaps also pay closer attention to what others have said about Internet gambling. Although his present letter neglected to do so, Kyl has elsewhere credited the "crack cocaine of gambling" line to Professor Robert Goodman of Hampshire College. Professor Goodman was referring not to Internet gambling, however, but to slot machines and video poker—distinctly lower-tech and nonnetworked games.

Kyl misquoted me on the risk that Internet gambling poses to kids. The full line reads: "At most, it will marginally increase the chances that some kids will gamble—kids with unsupervised and unfiltered Internet connections, who have not been raised to steer clear of adult-only activities, and who have ready access to credit cards." Those extra words matter. They show not only that prohibitionists exaggerate the threat to kids but that responsibility lies with each kid's family.

Kyl poses a false dichotomy when he asks whether I favor giving the incumbent gambling industry special treatment (as his bill does) or banning all types of gambling (as he apparently would like to do). He overlooks a third option, one immediately apparent to anyone concerned with individual rights: Let people peaceably dispose of their money as they alone see fit.

Once again we witness the devastating effects of the crack cocaine of conservatism: trying to legislate morality.

Preservation Methods

The article about Taylor Ranch in Colorado ("Treasure of La Sierra," October) was a welcome sight. My group, La Herencia en Santa Fe, has been lobbying the state legislature for land grants and rights under the Treaty of Guadalupe Hidalgo for more than 15 years. Some 40 million acres in Colorado are in the same legal position as the Taylor Ranch. Our group feels that private ownership is the only way to conserve these vast areas of the West.

New Mexico Sens. Pete Domenici and Jeff Bingaman are planning on introducing legislation on the land grants in this session of Congress. We are very concerned because they also want to purchase some land grant property and put it into the hands of the U.S. Forest Service.

La Herencia wants the land returned to the original heirs. If the government can't find the heirs, the group wants to be responsible for electing the Board of Trustees to administer these lands.

We do not feel that the federal government can do anything but create more problems for the impoverished people of northern New Mexico and southern Colorado. Private ownership and the government fulfillment of its trust responsibility are the only solutions for the future preservation of these lands.

We also feel that families like the Forbeses and Turners have done the right thing by preserving these lands. Most people think that groups like ours want to force everyone off our land grants. Our second group, Los Vecinos del Norte, does not want anyone to leave their land. There is nothing we can do about land loss that occurred more than 100 years ago; the only thing we can do now is live in peace with our neighbors. We are, however, reclaiming every single parcel of land that the government has had a hand in messing up.

Carmen Quintana
Santa Fe, NM
carm@trail.com

Karl Hess Jr. and Tom Wolf argue that prospects for improved management of the Taylor Ranch arise from "the transforming power of the marketplace." But their evidence, and the history of the ranch, do not support such a conclusion.

The Taylor Ranch has been privately held and "in the marketplace" for more than a century and a half, including the past four decades, while it has been controlled by the Taylor family. Its untransformed management during the latter period has ranged in ecological quality from fair to dreadful. Socially, things have been worse, as the Taylors have assiduously defended their property "rights" against their neighbors while acknowledging nothing by way of property responsibilities.

What seems to be transforming matters now is that long-hostile parties are at last negotiating with each other meaningfully and finding ways in which to cooperate—a process that Hess and Wolf, to their credit, have materially advanced. Opening

needed channels of communication is fundamentally a social process, not an economic one, and it can take place on public lands as well as private ones. After that, finding ways to make the numbers work is the smaller part of the puzzle.

The authors' gratuitous reference to "a grim sea of failed federal management" betrays their operating prejudice. While current management of Ted Turner's Vermejo Ranch may indeed be exemplary, it does not follow that private management ipso facto is better than public. The Taylors themselves have furnished proof to the contrary, as have many greater and lesser names from Charles Hurwitz to the anonymous proprietors of any number of farms, ranches, and subdivisions throughout the nation.

If the free market were a silver bullet for wise stewardship of the land, we would never have had a Dust Bowl or Love Canal, and non-point-source pollution would occur only on public land. The good work of the authors toward transforming matters at the Taylor Ranch is an important story and deserves telling, but their ax-grinding obscures the story's essential message: that shared good will and willingness to adapt can improve any management situation, public or private.

William deBuys
Santa Fe, NM

Tom Wolf and Karl Hess Jr. reply: Whether in life or in politics, there are no panaceas. Neither private nor federal ownership guarantees good conservation. However, the right incentives and institutions make private land a more promising setting today, especially when private lands can lead to better management of adjacent public lands, as they do in northern Colorado's Owl Mountain Partnership.

A century ago, the federalization of public lands may have been the right solution to an unregulated tragedy of the commons. But today, when conflicting political agendas and value systems gridlock management of our public lands, we look to private and communal lands for innovations, especially ones that are market-based. Mr. deBuys is correct that private landowners have rights as well as duties, but he ignores how both government and local politicians conspired to restrict the property rights of the owners of the Taylor Ranch to the point that no market solutions were possible because no clear title existed. Recent events at the ranch show that such a stand off is not inevitable and that both the ranch owners and their neighbors can benefit if they respect each other's property rights and work to expand their share of common resources through market-based solutions.

The quest by Ms. Quintana's group for more local and private solutions to New Mexico's Baca Ranch may actually get some attention if a bill passes to fund acquisition of the ranch and put its management in the hands of a board that is more locally responsible. People unfamiliar with the history of New Mexico may forget that what are now "public" lands were often once part of Mexican and Spanish land grants. How those grant lands found their way into the public domain is a subject that Congress should perhaps look at. In the meantime, a federally funded buyout of the Baca Ranch may move us a step closer to local solutions.

Finally, we are proud to be putting our own theories into practice through a conservation effort we call The Long-Term Landholder Monitoring & Stewardship Project. This 10-year experiment will go a long way toward developing answers to critics like Mr. deBuys—and also perhaps satisfy the longings of those who, like Ms. Quintana, think that conservation is better served if it is part of a sustainable local economic and ecological effort.

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Limited Market

Thank you for the informative and interesting article, "Truth, Terror, and David Trimble," by Michael McMenamin (October). I wish to clarify one point made, and that is that at no time since publishing *The Committee: Political Assassination in Northern Ireland* have we sold this book in the United Kingdom or Ireland.

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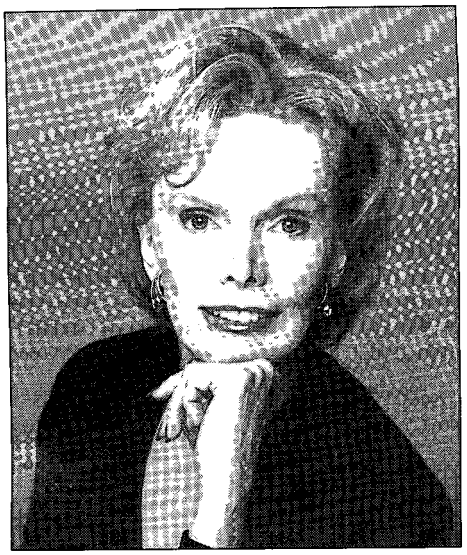

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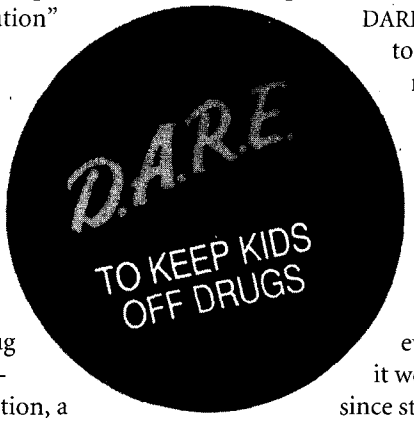
Futile Resistance

By Jacob Sullum

Contrary to the impression created by DARE T-shirts and bumper stickers, most kids do in fact "resist drugs," so there's nothing especially daring about it. But it does take a certain amount of chutzpah to push a "drug education" curriculum that has never been validated by independent research. That's what DARE —a.k.a. Drug Abuse Resistance Education, a program used in nearly three-quarters of U.S. school districts—has been doing for 16 years.



In the most recent confirmation of the program's ineffectiveness, researchers at the University of Kentucky followed up on a study in which students at elementary schools randomly assigned to DARE were compared to students who received drug information as part of health class. The initial study, which evaluated the students from sixth grade through 10th grade, found that DARE had a temporary effect on the attitudes they expressed toward drug use but no effect on drug use itself.

The follow-up study, which surveyed about 1,000 of the original subjects at age 20, was intended to test for "sleeper effects" that might show up after adolescence. "Few differences were found between the 2 groups in terms of actual drug use, drug attitudes, or self-esteem," Donald R. Lynam and his colleagues wrote in the August 1999 *Journal of Consulting and Clinical Psychology*, "and in no case did the DARE group have a more successful outcome than the comparison group." (The report is available at www.apa.org/journals/ccp/ccp674590.html.)

Lynam et al. offered two possible reasons why DARE continues to be the nation's most popular "drug education" program despite the lack of evidence that it works. First, since stopping kids from using drugs is an unquestioned goal, DARE is "a 'feel-good' program...that everyone can support." Second, parents see that most kids who go through DARE do not get into trouble with drugs. They may not realize this is also true of teenagers in general, because "adults may believe that drug use among adolescents is much more frequent than it actually is."

Hmm. Where could they have gotten that impression?

Betrayed Principals

By Mariel Garza

The public school experience sure has changed since today's parents put in their time. Staples such as gym class, driver's ed, wood and metal shop, dances, and recess have been curtailed or eliminated at many schools. Elementary- and secondary-school principals across the nation blame liability concerns for those changes, according to a survey conducted by the American Tort Reform Association in conjunction with two school principal associations.

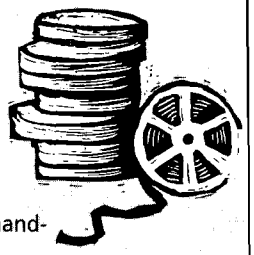
The survey, the results of which were released in September, was sent to 5,000 principals, and 523 responded to the four-page questionnaire. Respondents reported spending as many as 10 hours a week documenting events or attending meetings to avoid lawsuits.

Overwhelmingly, the principals said they tailor their administrations to avoid lawsuits. They said insurance concerns mean fewer choices and fewer programs for students. A quarter of the principals said they've had a lawsuit or out-of-court settlement in the last two years, compared with only 9 percent in 1989. That number probably will rise further: 60 percent of the respondents said they expect an increase in litigation as a result of the May 1999 decision by the Supreme Court making schools liable for student-to-student sexual harassment.

Balance Sheet

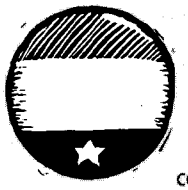
By Jeff A. Taylor

ASSETS



▲ **Skin Nix.** Fear of porn kills a bad idea to give tax credits to independent film productions. To combat lower production costs in Canada, Congress sought to give some booty to productions with budgets under $10 million. Then the suits realized that language would make every maker of X-rated movies eligible for the handout. Cut!

▲ **Investor Nation.** More Americans than ever are investors. A survey by the Securities Industry Association finds that almost 79 million individuals own equities, up from 42 million in 1983. Nearly half of all households own some stock, up from just 19 percent in 1983. Further, they report these shareholders are long-termers and are diversified, with more than 60 percent owning shares in international stock funds.



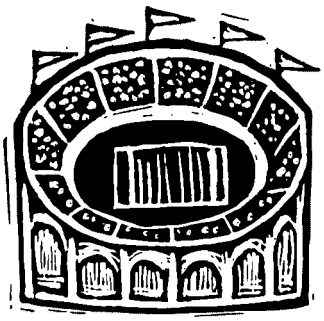
▲ **Tax Returns.** In the midst of the debate over campaign finance reform, taxpayers vote against public financing with their wallets. The percentage of taxpayers who elect to use $3 of their tax payment for the presidential election campaign fund is at 11.3 percent, down from 28 percent in the early '80s.

▲ **Mixed Bag.** Gun-grabbers struggle to explain why Hawaii's super-strict gun laws did not stop a lone nut from going off. The state is the only state that requires firearms to be both licensed and registered, bans cheap handguns, has a 14-day waiting period, and keeps tabs on second-party sales.

▼ FOIAed Again. The ever-trustworthy Department of Justice mulls weakening the Freedom of Information Act, which for two decades has allowed citizens a modest peek at their government's dirty laundry. The change would create a limited exemption for "information" provided by tipsters.

▼ The Profiler. Mosaic-2000, a pilot program created by the Bureau of Alcohol, Tobacco, and Firearms and the security firm Gavin de Becker Inc., quizzes students at 25 public schools about their backgrounds, including access to guns and use of "violent language." The higher their score, the greater the need for "intervention."

▼ Poor Math. Poverty may explode if the Census Bureau goes ahead with plans to redefine it. As it is, poverty measures do not count transfer payments—Food Stamps, Medicaid, school lunches—which help raise the living standards of low-income workers. If anything, the bureau already overcounts the poor.



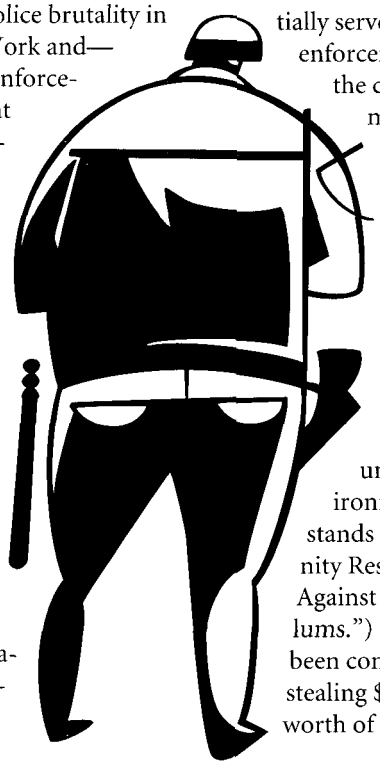
▼ Fields of Green. Sports moguls continue to wring public money from voters. Scottsdale, Arizona, is on the hook for $352 million and San Antonio for $150 million after voters approve plans to fund sports complexes. Voters in Houston reject a new basketball arena, but they are already committed to a $310 million football palace.

LIBILITIES

Gangsta Cops

By Jesse Walker

While police brutality in New York and—finally—law enforcement abuses at Waco have attracted national press coverage, a massive cop scandal in Los Angeles has garnered relatively little attention outside Southern California. Within L.A., however, the expanding circle of revelations and allegations is regarded as the worst police scandal since the 1930s, when the thin blue line essentially served as the enforcement arm of the city's infamous patronage system.



At the center of the new scandals is Rafael Perez, an officer in the anti-gang CRASH unit. (The now-ironic acronym stands for "Community Resources Against Street Hoodlums.") Perez had been convicted of stealing $1 million worth of cocaine from the evidence room and, in exchange for a lighter sentence, he implicated fellow cops in a host of other crimes. The most notorious: the time Perez and his partner handcuffed an unarmed teenager, shot him in the head, planted a rifle near his body, and then claimed they had acted in self-defense. Their victim, Javier Ovando, was paralyzed by the assault and sentenced to 23 years in jail on the officers' perjured testimony. Several of Perez's charges have been corroborated by other officers, many of whom have added new allegations of their own.

At press time, more than a dozen cops have been relieved of duty. Ovando and another prisoner have already been released from jail, a third victim has been released from parole, and dozens more may be set free. A series of civilian lawsuits is also expected. The CRASH unit has been almost completely discredited in the public eye.

Frighteningly, these revelations come as more and more police departments are adopting the military-style tactics that CRASH embraced. Who's supposed to protect us when a militarized police force starts adopting gangster values?

Permission Slip

By Ryan H. Sager

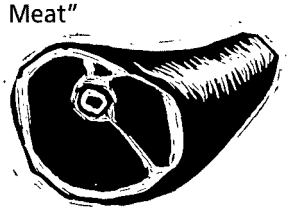
In October, the Federal Trade Commission voted unanimously to approve final regulations requiring Web sites to obtain parental consent before collecting personal information, such as names, ages, or e-mail addresses, from children under the age of 13. The rule was drafted hastily after privacy advocates began complain- ▶

SOURCES

Rep. Ron Paul (R-Texas)—who should know—calls it **"the only no-compromise gun lobby in Washington,"** and the Gun Owners of America Web site (**www.gunowners.org**) certainly delivers double-barreled updates on legislation related to the Second Amendment. The Second Amendment Law Library (**www.2ndlawlib.org**) takes a more scholarly approach, mixing law review articles with popular-press pieces on gun issues. For a comprehensive links to federal court cases dealing with gun rights, point your browser to **www.law.ucla.edu/faculty/volokh/2amteach/sources.htm**, a set of teaching materials maintained by REASON contributor Eugene Volokh, a professor of law at UCLA.

QUOTE

"An estimated 1.3 million Americans die of cancer, heart disease, and other heavily meat-related causes each year. It is time we looked at holding the meat producers and fast-food outlets legally accountable."
—Dr. Neal D. Barnard, in a September press release from the Physicians Committee for Responsible Medicine, urging a federal lawsuit against "Big Meat"



BRICKBATS

♦ Stephanie LaTronica spent nearly four years studying to be a Wiccan priestess. Among the rites she hoped to perform were wedding ceremonies. But she won't be doing that any time soon. The commonwealth of Virginia, where she lives, requires all those wishing to marry people to get county licenses. The Williamsburg County clerk refused LaTronica's request for a license, and that decision was backed up by a county judge. LaTronica is challenging the decision in appellate court. In the meantime, Wiccans are denied the same rights that Christians and Jews have in Williamsburg to be married by clergy of their faith.

♦ Cherry growers in Washington state bring in thousands of migrant workers each year to pick their crops. The jobs last just a few weeks, and there's always a question of where to house the workers. The growers thought they had a solution: tent camps. The camps would give the workers a place to sleep with hot showers, toilets, and clean drinking water. But then the Labor Department stepped in. It said the camps didn't meet federal guidelines, which mandate tents with 7-foot-high walls and solid floors. The feds also said the camps had to have refrigerators and stoves. The growers said that was too expensive. So they put up no camps. The result: Thousands of workers wound up sleeping in their cars or in sleeping bags in the forest.

ing about Internet marketing to children.

Given all the scare stories it's easy to forget that the issue is much ado about next to nothing. Once you get past the apocalyptic rhetoric that still clings to many Internet-related stories, the privacy advocates were simply shocked that companies were pitching products to kids—something that happens during every half-hour of TV and every time a school bus passes a billboard.

Though the new regulations will undoubtedly reduce the flow of information between children and businesses, they will also hurt smaller Web site operators and shut many kids out of parts of cyberspace. The FTC requires that a site get parental consent via e-mail or telephone before it can collect any personal data from a child. In cases where the information might be transmitted to a third-party, sites have to either provide a consent form that can be sent in via postal mail or obtain a valid credit card number from an adult.

Large companies such as Disney and the Discovery Channel have the resources to run a regulatory maze every time they collect an e-mail address from a child. But many smaller outfits do not, putting them at a competitive disadvantage. Opponents of the legislation have pointed out that children whose parents do not speak English, use computers, or have credit cards will have difficulty obtaining consent, effectively redlining them out of the Web's commercial zones.

Anti-Milk Men

By Jacob Sullum

If that white stain on Jennifer Aniston's upper lip doesn't give you the urge to down a tall, cold glass of milk, the hectoring of the anti-dairy crowd just might.

"Milk products, like tobacco products, are an enormous threat to the health of both children and adults," says Robert Cohen, author of *Milk: The Deadly Poison* and executive director of the AntiDairy Coalition, which "believes that the secret to optimum health is giving up milk and dairy products." Similarly, the Physicians Committee for Responsible Medicine calls milk "the number one health hazard facing young children and adults."

"Much Ado About Milk," a recently updated report from the American Council on Science and Health (available at www.acsh.org/

ARTIFACT

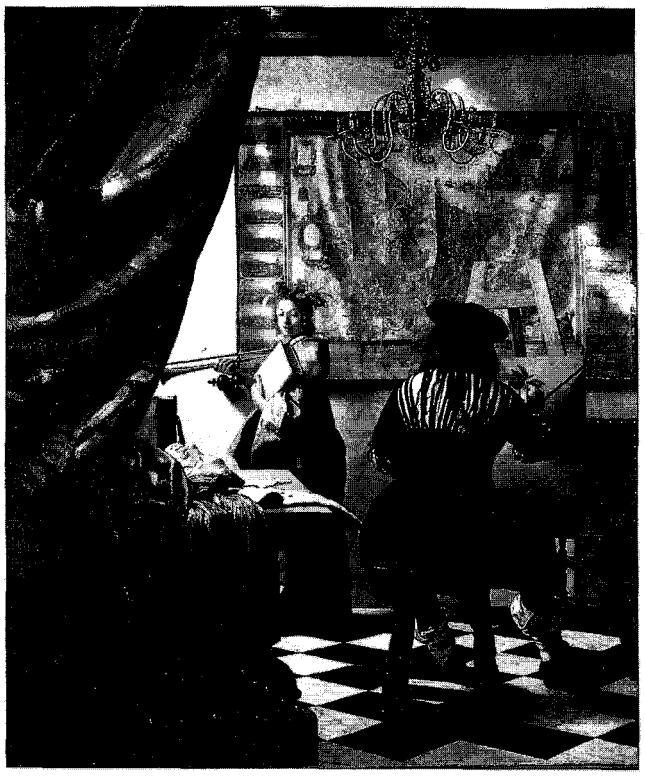


Photo Finish

In November, Washington's National Gallery welcomed Johannes Vermeer's famous 1667 canvas, *The Art of Painting*, as a piece of Fine Arts royalty. Scheduled as the centerpiece of the gallery's hugely popular 1995–96 Vermeer retrospective, the work was then deemed too fragile to travel. The gallery has now honored the restored canvas by making it a one-painting show.

Not bad, given that Vermeer was promptly forgotten for almost 200 years after his death in 1675. Dutch painting in general was long regarded by critics as "vulgar"—it portrayed too many middle-class, bulbous-nosed burghers. Vermeer's current reputation stems not only from the eventual embrace of Dutch work but from technology: It was the spread of photography that revealed Vermeer's remarkable treatment of light to ever more admirers.

The camera revolutionized the representation of motion, light, and focus. But it not only changed the way painters portrayed their subjects; it also affected the way viewers saw paintings. Vermeer's 17th-century, proto-photographic approach to light and focus was influenced by technology as well. He was close to Anton van Leeuwenhook, perfector of the microscope, and apparently shared his friend's interest in optics. Vermeer's art, in short, is a marriage of innovations, and of talent and machine. **—Charles Paul Freund**

publications/reports/milk99.html), carefully and calmly debunks such claims. While cows' milk is not recommended for infants, says ACSH Director of Nutrition Ruth Kava, it's an important, hard-to-replace source of calcium and other nutrients for children and adults.

Kava shows that the risks posed by milk have been exaggerated and that legitimate concerns such as lactose intolerance and fat intake do not require the wholesale rejection of dairy products. She concludes that "calls for the exclusion or near exclusion of cows' milk and dairy products from the American diet are not justified."

Hair Trigger

By Michael W. Lynch

Friends of Taalib-Din Uqdah, a well-known advocate of African-style hair braiding, are familiar with his somewhat cryptic anti-regulation mantra. "How can you license what you do not teach?" Uqdah says. "How can you teach what you do not know?" In an August decision that struck down California's regulation of such hair braiding, U.S. District Judge Rudi Brewster repeated Uqdah's take on the matter and added, "The court agrees."

The ruling grew out of a case brought by JoAnne Cornwell, a professor of Africana studies and French literature at San Diego State University, who both braids hair and trains others to do so in her San Diego home. Although African-style hair braiding requires no on-site cutting or washing, Cornwell would have to pay more than $7,000 to attend a state-approved beauty school in order to receive the proper license. Says Cornwell, "We can function perfectly well without these unnecessary regulations."

In a 26-page decision, Brewster, a judge for the U.S. District Court for the Southern District of California, wrote, "There are limits to what the State may require before its dictates are deemed arbitrary and irrational." Since only 110 of the required 1,600 curriculum hours at the beauty school could even be deemed "possibly relevant" to Cornwell's business, the judge ruled that forcing her to spend so much time and money was "wholly irrelevant to the achievement of the state's objectives."

That's not to say that Brewster ruled out regulating hair braiders in the future. Indeed, he warned that if hair braiders branch into too many "cosmetology-like tasks"—including "shampooing hair" with too many "cosmetology-like instruments," such as "combs"—the state would be well within its rights to send them off to beauty school.

Pissing Contest

By Jacob Sullum

Since the late 1980s, the degrading ritual of peeing into a cup on demand ▶

BRICKBATS

♦ Bernard Rocquemont was recently fined close to U.S.$15,000 by a French court. His crime? He had an enthusiastic work force. Rocquemont headed the firm Thomson Radars and Countermeasures. Government inspectors found that executives and engineers at the firm were often putting in more than the legal 39-hour work week without claiming overtime. So they prosecuted Rocquemont for those crimes. That should send a message to French industry.

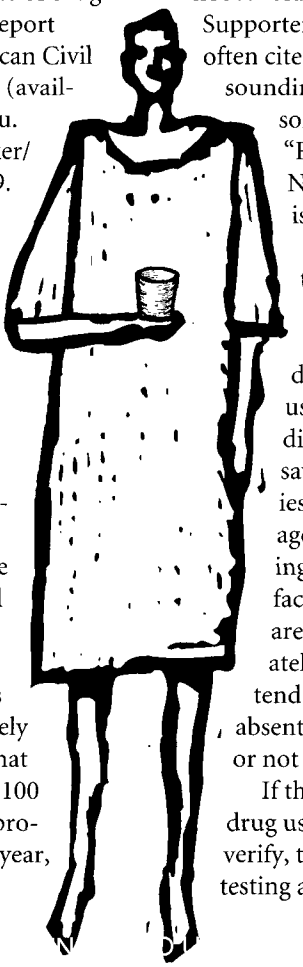
♦ Seminole County, Florida, forbade nude entertainment in places that serve alcohol. No philistines, officials understood that many patrons of the arts rely on booze between acts to make it through a night's offering. So they made an exception for theatrical performances. The exception lasted until topless clubs started staging plays such as *Macbeth* starring naked women. The county reacted to that dramatic turn by banning all nudity in places that serve liquor.

♦ Authorities in Quebec have some problems with Michael Calomiris' Web site. No, it isn't dirty pictures that has Calomiris in trouble. It's dirty language: English. Quebec requires that all commercial Web sites be run in French. Calomiris has refused to change the language on his site or to put up a French duplicate. So the government has fined him U.S.$477, an amount that will double each time he's cited and refuses to comply.

Henry Payne

has become increasingly familar to American employees. This trend has been accompanied by remarkably little skepticism about the cost-effectiveness of drug testing. A new report from the American Civil Liberties Union (available at www.aclu.org/issues/worker/drugtesting1999.pdf) seeks to remedy that situation, arguing that drug testing is a bad investment for employers.

The report shows that commonly accepted claims about the impact of illegal drug use in the workplace have little or no basis in fact. The widely cited estimate that drug use costs $100 billion in "lost productivity" each year, for instance, is based on a simplistic study that "compared the annual income of households that contained a daily marijuana user to the annual income of households that did not."



Supporters of drug testing often cite authoritative-sounding numbers from something called the "Firestone Study." No such study exists.

"Absenteeism is the only workplace performance measure on which drug users and nonusers consistently differ," the report says. Since the studies do not control for age or sex, this finding may be due to the fact that drug users are disproportionately young men, who tend to have higher absentee rates, whether or not they use drugs.

If the costs of illegal drug use are hard to verify, the costs of drug testing are pretty evident. A 1990 study of testing at federal agencies found that it cost $77,000 for every positive result. And since the vast majority of drug users are not abusers, the ACLU notes, the cost of identifying an employee whose drug use is actually affecting his work (assuming that such an employee would not be identified through other means) could be 10 times as high.

The ACLU argues that drug testing also makes it harder to attract highly qualified applicants, raises employer costs by forcing casual drug users into "treatment," and undermines morale. That last effect may explain why a 1998 study of high-tech firms found that drug testing was associated with *reduced* productivity.

Cybersquat Thrusts

By Ryan H. Sager

Both the U.S. House of Representatives and the Senate have passed separate versions of bills outlawing

"cybersquatting." According to Congress, cybersquatting occurs when a person registers as an Internet domain name a trademark or famous name to which he does not hold rights, with the intent of turning a buck.

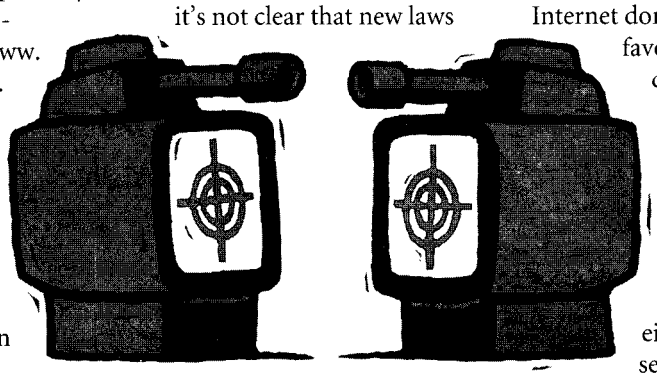
For Sen. Orrin Hatch (R-Utah), the sponsor of the Senate version of the bill, the motivation appears to be partly personal. When Hatch looked into setting up a Web site to publicize his bid for the Republican presidential nomination, someone offered him the domain name www.senatororrinhatch.com for $45,000 (Hatch declined the offer). While the House and Senate bills cover the use of famous names, Hatch is working with the author of the House bill, Rep. James Rogan (R-Calif.), to craft a provision that would outlaw squatting on any name if it could be proved that the motive was profit.

While such legislation seeks to simplify the matter, it raises a number of questions of its own. For instance, it's not clear whether or how coincidental or accidental interference with trademarks would be punished. What, if anything, should be done with potentially—and, one assumes, pointedly—confusing domain names such as whitehouse.com, which takes surfers not to the president's Web site (that's whitehouse.gov) but to a porno site?

Then there's the issue of parody Web pages. On the Web, a site's address can be speech as much as its content. Sites such as www.aolsucks.com use company names to lambaste corporations and famous individuals. That's one of the reasons more and more political candidates are preemptively buying up obvious variations on a theme before they launch their campaigns. GOP presidential front-runner George W. Bush's campaign, for instance, is reportedly the owner of such domain names as www.georgebushsucks.com.

As the Internet becomes more central to our lives, the issue of who owns the rights to a given domain name can only continue to heat up, especially when it comes to commercial trademarks. Despite the flurry of legislative activity in Washington, however, it's not clear that new laws are needed. The non-profit International Corporation for Assigned Names and Numbers (ICANN), which assigns and administers Internet domain names, favors resolving conflicts by having registrants undergo an arbitration-like procedure.

So far most disputes have been handled either through selling domain ▶



DATA

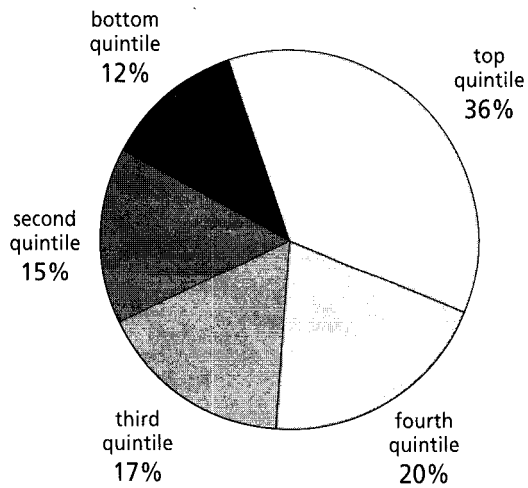
Info Gap

By Michael W. Lynch

You've heard the complaint: Although times are good, there is far too much income inequality in America. This gripe is grounded in data from the U.S. Census Bureau's annual report on income, the latest version of which was released in September. According to those data, the 20 percent of Americans with the lowest incomes earn a mere 3.6 percent of all wages paid, while the top 20 percent take home 49 percent of the loot. Translated into money terms, that means for every $1 earned by someone in the bottom quintile, a top quintile person earns more than $13.

Not true, says a recent report from the Heritage Foundation, which identifies three significant sources of bias in the Census Bureau figures. First, the quintiles are not really quintiles. The top quintile actually has 24.3 percent of all income earners, while the bottom contains only 14.8 percent. That's because the bureau counts households, rather than individuals, and high-earner households are more likely to be composed of married couples with multiple earners than are low-income households. Second, the bureau leaves out some forms of income, including government benefits such as food stamps, and fails to adjust for the significantly higher taxes paid by high earners. Third, the bureau doesn't account for the fact that those in the top quintile work nearly twice as many hours as those in the bottom. After these adjustments, says Heritage, the spread is reduced to $3.08 for every $1 earned. Which sounds almost European.

Distribution of Income in the United States If Working-Age Adults All Work the Same Amount



Source: Heritage Foundation

BRICKBATS

♦ Throwing a party in Chicago? Don't ask friends to bring in any fireworks. Cook County authorities voted to let the sheriff's department seize any cars it finds carrying pyrotechnic material. Under the law, if cops find even one firecracker or sparkler in a car, they can take it from the driver. But don't worry, the sheriff says he won't go that far. He promises to seize only cars carrying 10 pounds or more of firecrackers. The sheriff's word is the only guarantee that a bottle rocket won't cost you your car.

♦ Are you really good at video and computer games? Then the New Zealand government needs you. Under law, each game sold in that nation must be rated by censors for sex and violence. So the censorship board spends countless hours playing games. The problem is that the censors often aren't good enough to reach the higher levels of games to see what's there. Lawmakers are trying to address this problem, and a leading idea is to hire expert gamers as censors. (Another is to let censors rate a game based on a general impression, not a detailed analysis.)

—Charles Oliver

Scott Stantis

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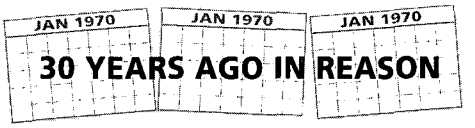
REMEMBER, SON, IN AMERICA ANY CHILD WHO IS INNOVATIVE AND WORKS HARD CAN GROW UP TO BE SUCCESSFUL, WEALTHY...
"AND CRUSHED BY THE JUSTICE DEPARTMENT."
MICROSOFT SUIT

names or by extending traditional trademark law, which protects against fraud and "dilution" of brand names, into cyberspace. Last summer, for instance, Avery Dennison Corp., well-known makers of mailing labels and other office-related products, lost on appeal a case against a Los Angeles businessman who had registered the domains avery.net and dennison.net, apparently with the intent of selling them to people with those last names. The U.S. Court of Appeals for the 9th Circuit ruled that the corporation's trademark was not famous enough to warrant exclusive use and that Avery and Dennison are common enough last names that trademark protection does not apply. In other cases, one assumes, the results would be different.

Republican members of Congress, however, seem to place little faith in the courts. "Traditional trademark law is very cumbersome and expensive," says Grayson Wolfe, an aide to Rep. Rogan. Wolfe acknowledges that the legislation may restrict speech in ways that raise constitutional issues. "It's hard with the First Amendment," he says, "but we're working on it."

There's another potential problem with whatever legislation ultimately makes it to the White House (the chief executive's residence, not the porno site). The Clinton administration favors relying on current trademark law to resolve disputes, so any bill submitted to the president may face a veto.



☛ "We are trapped in the middle of a street war between two breeds of pigs, the police and the New Left."
—"Animal Farm 1970," by Lanny Friedlander

☛ "Nothing is more ill-suited for smashing the state than a riot. The state *co-opts* riots; they are its *rationale*."
—"Animal Farm 1970," by Lanny Friedlander

☛ "There is...good reason to believe that early rulers sought and maintained a monopoly in [mail] service because they feared the ready communication of anxiety and popular discontent about their political regimes. Thus, to suspend the legal traffic in private letters was a useful political device—common to all dictatorships—to suppress the circulation of political ferment."
—"Neither sleet, nor...s(forget it)," by D.T. Armentano

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No-Publicity Stunts

In which our man in Washington goes where other reporters are too jaded to tread

By Michael W. Lynch

Date: Fri, October 15, 1999 9:05:52 AM
From: mlynch@reasondc.org
Subj: In Search of the Social Security Trust Fund

I got a call Wednesday evening from Hank Welch at the Seniors Coalition, a conservative group known mostly for their adept direct-mail fund raising from the nation's elders. They'd just launched their Pork-Buster Patrol campaign, featuring a pink bus that will travel the country over the next three years exposing federal pork that threatens seniors' interests.

I'd met someone from the group earlier in the year and, considering my love of both buses and the intricacies of Social Security, had expressed interest in riding along if they motored out to the Bureau of the Public Debt in West Virginia to inspect the Social Security Trust Fund. Now I had my chance.

5:25 a.m. We pull out of the Springfield, Virginia, Hilton in the Porkbuster, a luxury Fleetwood RV appointed with oak paneling, two television sets, leather couches, a refrigerator, a washing machine, a shower, an oven, and, most important, a double bed. I'm bracing for a long day. The Bureau of the Public Debt is seven hours away.

Marion Hallman, a wiry woman with a great white mane, is maintaining a constant banter and exhibiting energy that no one should have at 5:00 in the morning. I make a quick escape to the bed in the rear of the bus and sack out next to a clear garbage bag bursting with individual bags of pork rinds.

8:40 a.m. The Porkbuster stops in Friendsville, Maryland, a town with not a single cup of coffee for sale. Marion, who has no apparent need for any, keeps repeating what a woman at a coffee-free corner store told her: There used to be restaurants here, but the highway moved and they were no longer making any money. "The same thing happened in Florida," she says. I step out for a walk and inspect the spectacle in which we're riding.

The pink Fleetwood RV is nearly as large as a Greyhound bus. Toward the front, a grimacing pig emerges out of the Capitol dome like a dancer from a stag party cake. It dispenses dollars to a reclining pig at the bus's rear. The reclining pig has been caught in the porkbusters' net. "Let's throw a net over pork-barrel spending," read white letters on the pink background. A sign superimposed over the pig's body reads: "Amount Stolen From Social Security Trust Fund: $840 billion." It's quite a sight.

10:35 a.m. We finally find a restaurant for breakfast, a hilltop Holiday Inn, and I start collecting background on my traveling companions. Marion is from Boca Raton, Florida, where she has long been politically active. She claims to be an accountant and former tax lawyer. "I'm like crabgrass," she says. "I pop up all over." She flew up to D.C. on Tuesday and has been on the big pink bus ever since.

John Kartch captains the Porkbuster. He hooked up with this job shortly after he came to D.C. from North Dakota, where he graduated from the state's flagship university in 1998. "I see this as really fun, something I believe in, and a great way to see the country," says Kartch of his commitment to pilot the pink beast 620,000 miles a year for three years. His goals: to identify and eliminate government waste and to stop special-interest legislation. Kartch will drive 14 hours today on a reported two hours of sleep.

11:15 a.m. The pink beast pulls out of the Holiday Inn, and I start talking to Steve Cohen, a 1999 graduate of the University of Virginia. The son of a retired UPS driver and a nurse, Cohen has been working for the Seniors Coalition all of three days. He was sent there as a temp. "I never thought I'd be a lobbyist," says Cohen, who is in charge of the day's pictures. He'll be capturing the Porkbuster with digital still and video cameras.

11:35 a.m. I interrupt Jed Richardson, the chairman of the Porkbuster campaign, as he sits on the leather love seat jotting down notes. Richardson was born and raised in Salt Lake City, where he now lives. Like Marion, Jed's retired—twice, in fact. In 1982 he retired from Brigham Young University, where he was a professor of communications and coached the debate team. In 1994, he left after a decade of work in government, which started with a job in Utah Sen. Orrin Hatch's office and included stints in the Department of Education and the Office of Refugee Resettlement. The problem of government waste, he says, comes from two factors: "People don't know. And the ones that know aren't motivated." Jed assures me that the Porkbuster will address both of these problems.

1:05 p.m. The Porkbuster pulls into an RV parking two blocks from our destination. John changes into a suit.

1:37 p.m. We enter the Bureau of the Public Debt under a green awning. Jed, who doesn't waste words, calls my attention to a barrel-sized garbage can filled with black golf umbrellas. A sign reads: "Umbrellas for use by bureau employees while attending classes, meetings, or official business." "Government-funded umbrellas," he said, as we walked past. "There's a pork barrel." A sign informs us

HENRY PAYNE

that the building's cafeteria is not open to the public.

1:53 p.m. Matt Smargiasso, manager of the trust fund, and Howard Stevens, director of the division of special investments, escort us into a conference room. Howard starts to tell us his plans for the meeting, but before he can get a complete sentence out, the ever-energetic Marion informs him she wants to see a balance sheet, financial statements, and a note. She says that the biggest problem today is a lack of trust in government and such proof of the Social Security Trust Fund will help restore faith with the seniors back home.

To the relief of all, Matt passes down a few bundles of paper and starts his presentation, telling us that the one thing everyone at the bureau is especially proud of is the information they provide the public. He hands each of us the "Monthly Statement of the Public Debt of the United States" for September 30, 1999. Total debt: $5,656,271,000,000. Total marketable: $3,232,998,000,000. Total nonmarketable: $2,414,242,000,000. He explains that the Social Security Trust Fund is in the nonmarketable section, and then proceeds to show us where it is among the 185 nonmarketable trust funds.

Marion thinks she hears Matt ask if we want coffee. "Coffee yes, coffee yes," she says to a surprised Matt. "You won't let us in the building cafeteria, but at least you could give us a cup." Matt doesn't know what to do. Howard makes an awkward face. We move on.

We have traveled more than seven hours to inquire whether the fund exists. Matt assures us it does and points to the four funds, right there on page 7, in which the money can be found.

I ask if the trust fund is real, since the bonds can't be sold to anyone but the government. Of course it's real, says Matt, pointing me to the work of Robert Reischauer, the former Congressional Budget Office director and Brookings fellow who will soon head the Urban Institute. Matt walks us through the process of how the trust fund is filled. The money from our paychecks is combined with the employer portion and sent to the government. The government makes an accounting entry and invests the money that very day in a bond that will mature on June 30 of that fiscal year, with an interest rate that equals the average of all marketable bonds that have a maturity of more than four years.

Clear on that? After June 30 of each year, any funds that haven't been paid out to beneficiaries get "reinvested in buckets of one to 15 years." Matt starts writing numbers on a presentation board, illustrating how $150 billion would be invested in $10 billion increments to mature in each of 15 years. He passes around a printout, a quarter-inch thick, documenting each bond the fund owns.

Howard pulls out a real bond. I can't wait to get my hands on it, but it seems stuck with Marion, who is sitting to my left. It is a regular piece of paper that reads: "The United States of America For Value Received and Promised to Pay to The Federal Old-Age and Survivors Insurance Fund $23,218,801,000." The interest rate is 6.25 percent. On the bottom it reads, in boldface, "Non-transferable."

Marion asks it she can take the $23 billion bond back to Florida to show her seniors. Howard has to say no. Matt asks Marion to find the bond in the ledger. She, being a former accountant, does so.

I want to get back to the issue of whether the Social Security Trust Fund is just an accounting fiction, as many noted D.C. analysts insist. I ask what happens when the bonds are sold. Matt asks what happens when I buy a security from a broker such as Merrill Lynch. I give them money, I say, and they credit me with a security. So your money is gone? he asks. I say yes. That's what happens here, he replies. The government gives us money, we credit them with a security, and the money is gone. Ergo, it's real. I'm not convinced.

I point out that in 1998, when the government supposedly ran a surplus, its debt increased. This, I say, was like putting money in a bank account and having the balance decrease. Didn't this have something to do with how the Social Security Trust Fund is credited? I propose that we follow a dollar of the Social Security surplus as it is supposedly invested in government bonds. It comes into the fund, I say; you buy one of these pieces of paper, which you consider a real good; and then the government spends the dollar again, either on a real good or to buy back another bond. So the dollar is essentially spent twice: once on a Social Security bond and again on whatever the government wants to buy.

This line of questioning goes nowhere, so I try another approach: What happens when the bonds are redeemed? Don't taxes have to increase or other spending decrease? Matt agrees, I think. But time is running short, so we decide to take a look at the actual trust fund—the safe—which is our primary objective.

3:05 p.m. I expect to take an elevator down to a basement vault, perhaps to pass through a metal detector. Even submitting to a body search isn't out of the question. But we halt outside Howard's unit: Room 309-1, Division of Special Investments. The safe is inside—a yellow, fireproof, five-drawer filing cabinet, sitting nonchalantly in front of a white pillar. The safe weighs 535 pounds, according to a sign at its base. A security log records the time it is opened each morning and closed each evening. Howard tells us that we can't take a picture of it. I ask why. After a contemplative pause, he says, "Security."

Not 10 feet away sit the Dell personal computer and Hewlett Packard laser printer that produce the bonds. This we can take a picture of, Howard says, and Steve gets to work.

3:40 p.m. We're back on the Porkbuster. The mood is upbeat—there's almost a post-coital glow, so pleased are we to be among the few who have seen the trust fund.

5:50 p.m. We pull into a Bob Evans

"Are you stoned?" I thought it a perfectly reasonable question, since we were at a pro-drug rally, his eyes were suspiciously glassy, and he thought I worked at the Institute for Humane Studies.

restaurant somewhere in West Virginia for dinner. I buy a six-pack of Coors Light, a cigar, and a deck of cards from a gas station. Steve buys a six-pack of Budweiser. Back on the bus, we sit down at the table, conveniently close to the refrigerator, for five hours of cards and what would technically be considered a round of binge drinking. I keep beating him at gin. I teach him cribbage. I beat him at that too.

1:20 a.m. I climb off the Porkbuster at the Holiday Inn in Rossyln, Virginia, still unconvinced that the Social Security Trust Fund exists.

Date: Fri, November 5, 1999 2:36:01 PM
From: mlynch@reasondc.org
Subj: Doping in D.C.

"Are you stoned?" I asked a fellow I recognized from Cato's recent drug conference. I thought it a perfectly reasonable question, since we were at a pro-drug rally, his eyes were suspiciously glassy, and he thought I worked at the Institute for Humane Studies. "What difference does it make how you are dressed if you're demonized?" he demanded, referring to a request from the protest organizers to "dress conservatively." He denied any inebriation and argued, "We've been doing the respectable thing for a while and it isn't getting us anywhere."

I roamed through the crowd of around 150, mostly college students. They had gathered at the edge of Rock Creek Park for a protest and candlelight vigil aimed at the Western Hemisphere Drug Czars Conference, which was going down at a hotel not even a football field away.

A pair of Latin American indigenous people were telling their stories on stage in Spanish. "For us, coca is food," I heard the translator say. For us, I thought, it is a food substitute.

I was heartened to see that college students still smoke. But all they were smoking was cigarettes. I was looking for a communal joint, straining to smell even a bit of bud. No luck. I sauntered over to the refreshment table to see if they had any brownies. Nothing. D.C. is such a button-down town that even a pro-drug rally resembles a Midwestern meeting of the Young Republicans.

The protesters lit their candles, stood along the off-ramp, and waved signs. The most creative called for "Hookahs Not Bazookas." I asked a cop with an enormous dip of chewing tobacco in his lip if he'd confiscated any joints or smelled any marijuana smoke. Nope, he said, standing sternly while keeping an eye on a fellow who was dancing in the crosswalk while dressed in an oversized Barry McCaffrey costume. That's too bad. I bailed.

Date: Fri, November 5, 1999 2:29:38 PM
From: mlynch@reasondc.org
Subj: Giving Peace a Chance

"Paint your message on the wall," a slender, long-haired, bearded man said as he bounded toward me on the Capitol Mall, just west of the Reflecting Pool. I was there to check out the "Wall of Denial," promised in a press release to be a 200-foot replica of the Berlin Wall. A coalition of anti-nuclear groups called "Project Abolition" is using the wall as visual Viagra to pump some blood into their "Who really cares?" issue of world peace through arms control.

The theme is elementary: The Cold War is over, so we should get rid of the arms that, according to these folks, didn't help us win it. They are planning a ceremony to tear down the wall on November 9, to coincide with the 10th anniversary of the real wall's destruction. This wall is plywood, not concrete, however, so I suspect it will not chip or crumble. Perhaps they should burn it.

Although I declined to paint, I did strike up a conversation with James McGuinness, known as "Guinne" to his friends, who, like him, are mostly professional peace activists. "We're trying to tell the idiots over there," he said, pointing to the Capitol building, "to take it down. The idea of not having the [Comprehensive Test Ban Treaty] is ludicrous."

Guinne started his life of protest in the 1970s with Vietnam and has been at it full-time since 1986, when he helped found Seeds of Peace, a mobile group of multi-purpose protesters. He has no mailing address, no ID, and no job. He does, however, have an e-mail address. When I asked him how he made a living, he replied, "What's a living?" If things get too tough, he'll take a job. He bartended in upstate New York for a spell and made lattes in Whitefish, Montana, where he kept busy protesting caged elk farming. He travels by bus, thumb, or friends. He spends a lot of time living at or near various protest sites, which come rattling off his tongue at too quick a pace to record.

Guinne, whose weathered face vouches for a life spent largely outdoors, offered much to agree with. He repeatedly referred to members of Congress as idiots and railed against the doubling of the president's salary. He said he doesn't pay taxes, since the money isn't spent the way he would like it to be.

He spoke of "trustafarians," trust-fund hippies who "you never see do anything but who always have money," and "media sluts," who show up to a protest only if the media are expected to cover it. He nailed D.C.'s meeting culture: "It's all they do in this town. Ten hours a day. Everybody always meets and does nothing."

Nothing was precisely what was happening at this event, billed as "most ambitious call to action we have taken in a long time." The peace movement, Guinne acknowledged, "doesn't have the cachet it used to." But he added, "There's still people working the issues."

On this brisk November morning, in front of a gray plywood wall painted with all sorts of banal slogans—"Peace Now," "Free the People," "Solar Power"—Guinne was one of those people. As I left, he approached a jogger stopped at a light. "Put your message on the wall. Be the Hundredth Monkey," he says, referring to an old peace movement legend of how one person's awareness can cause a society-wide change in consciousness. The jogger fled.

The peace activist railed against "trustafarians," trust-fund hippies who "you never see do anything but who always have money," and "media sluts," who show up to a protest only if the media are expected to cover it.

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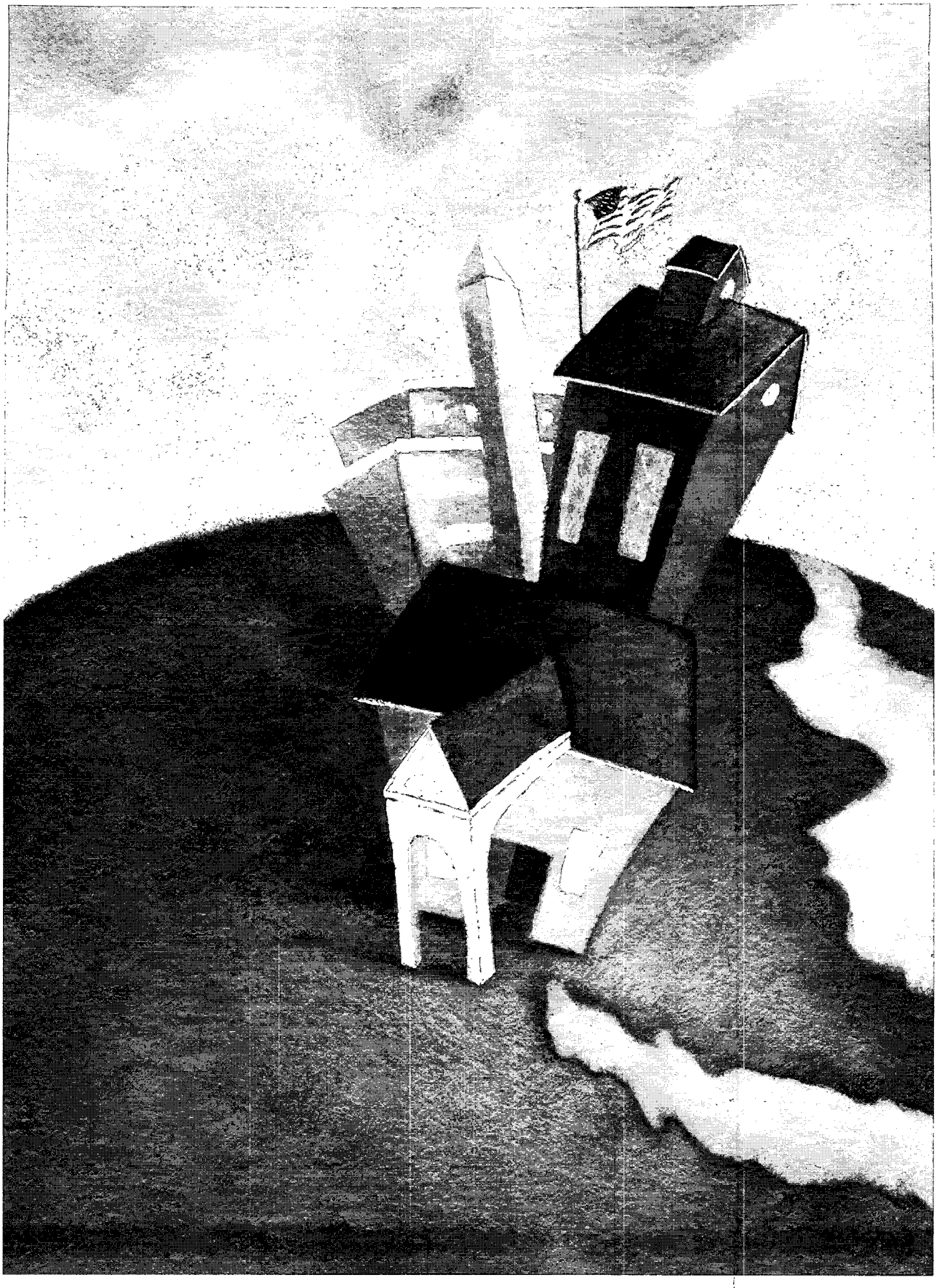


RAMPAGING TOWARD CHOICE

Why parents in Washington, D.C., are embracing vouchers and charter schools—and what that says about public schools.

By Michael W. Lynch

Bernice Gates started what she calls her education "rampage" back in 1997, when her agreement with her grandson Silky broke down. Gates had promised Silky, a seventh-grader, $5 a week to tutor his little brother Derek, but things weren't working out. Silky was doing his part, teaching his brother while earning A's and B's at Bertie Backus Middle School, a public school in northeast Washington, D.C. The problem was that Derek, who attended third grade at a small church school, was already working at a more advanced level than Silky was.

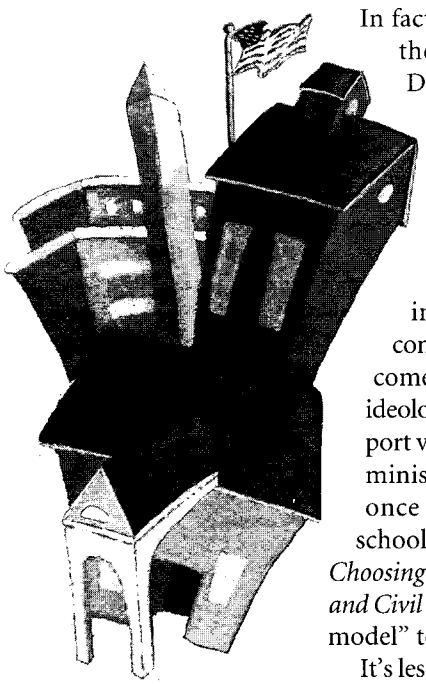
"The difference was the school," says Gates. She says Silky was earning top marks for showing up and being quiet, but he wasn't learning much. "I knew I had to get my kids out of public school," she concluded. "I knew my kids had to be taught the way Derek was being taught."

Gates, mother of five and grandmother of five, was then raising six children. Derek attended Calvary Christian Academy on a scholarship provided by her minister. But the others were in government schools, and Gates wanted them out. The problem was how. Gates, who had left her abusive husband, was relying on welfare while she earned a B.A. in social work at the University of the District of Columbia. She pulled Silky out of school—he was being picked on for studying anyway—and counted on God to provide. Gates believes he did.

Derek's teacher told Gates about the Washington Scholarship Fund, which provides partial scholarships for low-income D.C. students to attend private schools. Gates applied and secured scholarships for three of her children. Silky would attend eighth grade at a D.C. Catholic school. Derek would stay at Calvary Christian, where he would be joined by William, who was entering kindergarten.

JOHN BERRY

These low-income parents are the very people in whose name liberal Democrats and public school officials have long been designing government programs. Now the help these families want most is help leaving government schools.



But the move to private school didn't come easy. Silky failed his entrance exams, and Gates had to make a personal plea for him. "He didn't come close," says Gates. Once enrolled, Silky found the work difficult: He earned straight F's. Since he was accustomed to A's and B's, that destroyed his self-esteem. "Do you know how devastating it is to think that you are getting it and to find out that you aren't?" says Gates.

Finances proved challenging, too. At one point, Gates was spending $700 a month—half of her income—on education, including her own. One month, she reports, she had $70 left after bills, for a seven-member family. Gates couldn't make the rent, so she moved into a friend's basement. "We lost our home, but they didn't lose their place in school," says a defiant Gates. "That's how much their education means to me."

You've just met a representative beneficiary of school choice in Washington. Many such parents are, like Gates, black women raising kids or grandkids on their own. They are not "anti–public schools." Like Gates, many are graduates of the same school system from which they seek to extricate their kids. They place an extremely high value on education and are making often-heavy sacrifices in their children's interests. Frequently, they are religious, so God in the schools causes them no concern. But they aren't members of the so-called religious right, demonized by People for the American Way and other anti-scholarship groups as the force behind school choice.

In fact, these mothers and grandmothers are the very people in whose name liberal Democrats and public school officials have long been designing government programs. Now the help these families want most is help leaving government schools.

Since the first public voucher program started in Milwaukee in 1990, an important shift has taken place. Those concerned with the daily struggles of low-income Americans have joined forces with the ideological proponents of school choice to support vouchers. New York University public administration professor Joseph Viteritti, who once worked in the New York City public school system and has just completed a book, *Choosing Equality: School Choice, the Constitution, and Civil Society*, speaks of a shift from the "market model" to an "opportunity model."

It's less of a shift, however, than it is a piling on. As publicly funded voucher programs got going in Milwaukee and Cleveland, and private programs sprouted in cities across the country, it became clear that the main beneficiaries of school choice are low-income, urban parents. They have, in turn, become the driving force behind school choice. In 1998, Bernice Gates took her "rampage" to *The Oprah Winfrey Show*, an appearance that introduced hundreds of thousands of low-income parents to the potential benefits of school choice. Polls show that school choice is far more popular with minorities than with whites, and most popular with low- and modest-income minorities. A 1998 *Washington Post* poll found that 65 percent of D.C. blacks with annual incomes under $50,000 supported taxpayer-funded vouchers for private schools. A 1998 national poll by the Joint Center for Political and Economic Studies, the leading black think tank, found that 65 percent of blacks 26 to 35 years old supported vouchers, compared to 46 percent of whites in this age group.

This support poses a dilemma for Democrats, who are nominally committed to the poor on the one hand and politically beholden to public school teachers unions on the other. So far, civil rights organizations, which provide moral cover for Democratic politicians and unions, have stuck with the anti-voucher coalition. But there are dissatisfied rumblings.

Urban League President Hugh Price has warned the education establishment not to assume the support of black parents. In September 1999 the NAACP fired Colorado Springs branch President Willie Breazell after he wrote a column favoring school choice. But the same month, former Atlanta Mayor Andrew Young told an NAACP awards banquet, "If you're in an...under-achieving school, then you have a right to seek a voucher to go to a school where you can be guaranteed some level of achievement."

Private voucher programs, by contrast, are politically irresistible. President Bill Clinton supports them and has even hosted recipients at the White House. The Children's Scholarship Fund, the largest private scholarship foundation, boasts a bipartisan board that includes Martin Luther King III and Sens. Daniel Patrick Moynihan (D-N.Y.), Thomas A. Daschle (D-S.D.), and Trent Lott (R-Miss.).

Teachers unions argue against school choice on the grounds that public money shouldn't go to unaccountable private and religious institutions, but they have yet to come up with an effective argument against private scholarship money. The best they can offer is the claim that private vouchers are a false promise because the money is not guaranteed forever, and the suspicion that they are

a prelude to universal vouchers. National Education Association President Bob Chase fretted in *USA Today* that private vouchers are a "Trojan horse for public education."

In the debate over school choice, charter schools, and public schools, the tendency has been to set one against the other, comparing and contrasting approaches in a quest for a single best educational model. But in D.C., where a solid charter school law and an influx of private scholarship money have created new schooling options in the last two years, the different systems have been interacting in unexpected ways.

Parents receiving vouchers often have chosen to keep one or more children in the public schools. Sometimes their decision is based on financial concerns; with annual incomes averaging $17,000, any financial setback may force them to pull all their kids from private schools. But sometimes parents are satisfied with a particular public school.

Private and charter schools, in turn, rely on the expertise, skills, and pensions of former public school employees. These teachers are happy to apply their skills in a rewarding environment, and teachers' pensions have been a factor in staffing alternative schools and keeping costs down. Charter schools, which remain part of the government school system, are by far the most popular new option for low-income parents. They have also become an option for families with kids in private schools. In other words, charter schools have begun to compete with private schools, and that has some conservatives grumbling.

It's an evolving mix. Still, as options have emerged for D.C. parents with modest incomes, some things are becoming clear. Urban parents want a choice, even when it means making personal sacrifices. They want schools that provide safety, respect, solid academics, and Bible-based values.

In Washington, where school officials routinely confiscate knives, guns, and razors, parents put a premium on safety, as they do in urban systems across the country. In the first seven months of the 1997–98 school year, there were 80 assaults with a deadly weapon, and 313 simple assaults reported in the D.C. schools, a system serving about 80,000 students at that time. Two students, both 16, were killed. Neither murder occurred on school property, but the incidents reflect a context of community violence in which the schools attempt to function.

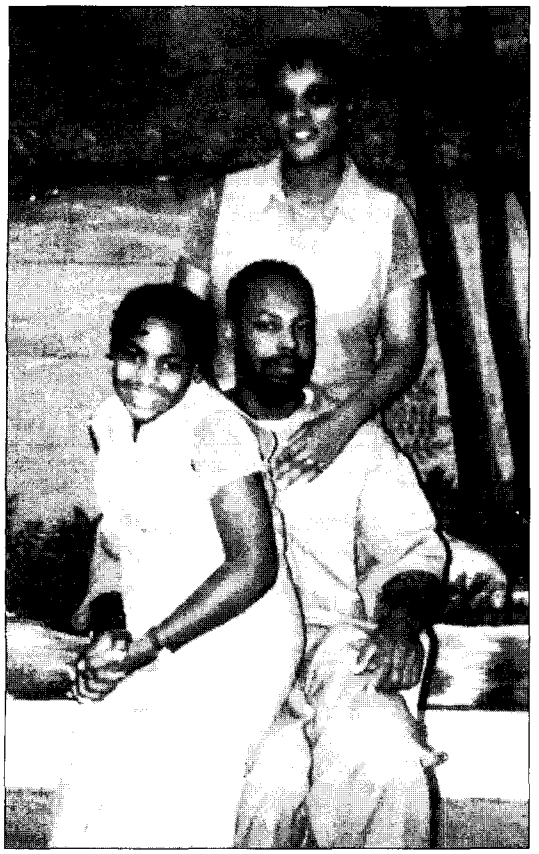
D.C. parents also crave what no insulated monopoly provides: institutions that are responsive and respectful. They want their phone calls returned, their questions answered, and updates on their children's progress. Their goal is a simple one: to have their children prepared for college or, at a minimum, for a self-sufficient life. Given that D.C. public schools spend $9,123 per student a year, those demands are not unreasonable. Yet a third of the students drop out before graduating, and those that graduate function below 12th grade level. The University of the District of Columbia reports that it takes two years of remedial work to get a city graduate up to par. And these are the students who go on to college. It's easy to see why government school enthusiasts are incredulous that children could be better educated at far less cost.

"If I have an education and parents who can support me, and I feel backed up against a wall, then what about other parents?"
—Virginia Walden, executive director of D.C. Parents for School Choice

Other structural issues are emerging as well. The longer children stay in D.C. government schools, for example, the further behind they fall. This has implications for political reforms as well as private programs. Private schools can get a second-grader caught up quickly, but an eighth-grader who is working at a fourth-grade level presents an almost insurmountable challenge.

Good, relatively low-cost private schools exist that will welcome former public school students and work to bring them up to grade level. And where money is available, myriad organizations will found new schools. Roughly one third of D.C.'s charter schools are specialized schools designed to meet the needs of the very students the public schools blame for their failures.

That is what Virginia Walden has discovered. Walden is executive director of D.C. Parents for School Choice, located in the basement of an apartment building four blocks from the headquarters of the National Education Association. She stumbled upon school choice when her son William started to get in trouble at Roosevelt High School. "As soon as he started going there he became a terror," says Walden. "He said if he did well in school he would get labeled 'smart' and harassed." When he brought home all F's without warning, Walden knew she had to get him out. "Two teachers didn't even know his name," says an exasperated Walden, who was active in the



Angelia Orr-Williams (standing above with her husband Andrei Williams) planned to send her daughter Ashlee (above and inset) to a performing arts high school. But before that loomed middle school, where so many D.C. children have been derailed. "I was dreading it," says Angelia.

school's PTA. A neighbor offered to help send William to Archbishop Carroll, a Catholic high school. "We saw an improvement right away," she says.

Walden decided to be the same kind of good neighbor to other D.C. parents in need. "If I have an education and parents who can support me, and I feel backed up against a wall," she says, "then what about other parents?" She is an education broker for low-income D.C. parents, matching families to schools. "We have become a one-stop issue shop for poor parents," says Walden, a warm woman whose deep laugh serves her well in her work with the public.

Having served more than 1,000 parents since 1998, she says the issues are simple: quality of education, safety, and responsiveness. "The biggest complaint we get is that traditional public education doesn't encourage parents to be part of their kids' education—and they don't say it that nicely," says Walden.

In 1997, about the time Bernice Gates was beginning her "rampage," the Republican-led Congress was attempting to assist her. It eventually passed the District of Columbia Student Opportunity Scholarship Act, which dedicated $7 million in new government money for D.C., to be used for $3,200 scholarships for 1,800 students. Democrats argued that the vouchers were unconstitutional, that the money wouldn't help enough children, and that it would build a new bureaucracy. Sen. Ted Kennedy (D-Mass.), who led a filibuster, derided the bill as a "foolish ideological experiment." D.C. Delegate Eleanor Holmes Norton, the city's nonvoting representative in Congress, provided cover for the anti-scholarship forces, assuring her colleagues that the people of D.C. didn't want "vouchers imposed on the District of Columbia." President Clinton agreed and vetoed the bill in May 1998.

At the same time that Democrats were working to block federal funds for low-income children, private philanthropists were focusing on scholarships as a means to provide parents with opportunity. Private scholarship programs, which typically fund about half the tuition of low-cost private schools, were already operating in 30 cities, serving 23,625 kids with more than 300,000 on waiting lists. At the time, the Washington Scholarship Fund was supporting 239 D.C. students.

In 1997, financier Theodore Forstmann and Wal-Mart heir John Walton decided to pump some liquidity into the D.C. private school market. Each promised to contribute $1 million a year for three years to the scholarship fund, enabling it to provide 1,000 more scholarships, each worth 30 percent to 60 percent of tuition, up to a cap of $1,700. More than 7,600 D.C. families applied.

Shocked, then heartened, by the demand, Forstmann and Walton decided to take the program national. They set up the Children's Scholarship Fund, donating $50 million each and announcing their intention to raise more. The demand was overwhelming. In 1998, more than 1.25 million families applied for 40,000 scholarships. In Baltimore, 44 percent of eligible students applied. One-third of the eligible students in Washington, New York, Philadelphia, Newark, and New Orleans also wanted in.

Charter schools are essentially deregulated government schools that receive the per-pupil allotment of money so long as they stick to their mission. Minnesota was the first state to allow charter schools, in 1991; there are now 1,800 such schools serving 350,000 children in 36 states, D.C., and Puerto Rico.

Charter schools came to Washington in 1996, when President Clinton signed the D.C. School Reform Act. Schools started forming immediately. This year, 31 schools will educate roughly 7,000 students, nearly one in 11 students in city schools.

Ashlee Williams, a 12-year-old with a mischievous smile, is one of them. Washington's charter schools have tended to the specific: Schools have been

founded to serve students with learning disabilities—roughly 10 percent of the D.C. government school population—and students who have been in the juvenile justice system, the very types of students public school apologists blame for the system's dismal performance and then cite as the reason government schools are needed. Charter schools providing rigorous math and science education have also been established, as have schools devoted to public policy and technology. Ashlee attends a unique charter school: the nation's only public boarding school, the SEED Public Charter School. Each of its students must come from D.C.

Ashlee's needs are special, according to her mother, Angelia Orr-Williams. Ashlee is bright. Having combined second and third grade in a single year, she was ready to attend seventh grade at 11 years old. Angelia planned to send Ashlee, who sings in the church choir, to the Duke Ellington School of the Performing Arts, which specializes in music. But before that loomed middle school, where so many of the city's children have been derailed. Says Angelia, "I was dreading it."

Ashlee was assigned to Ronald Brown Middle School. It wasn't so much the academics Angelia was worried about. "They had high credentials," she says, but her concerns centered on safety. Ashlee would be two years younger than most of her classmates, and, says Angelia, "She tends to be feisty at times. She gives off body language. I didn't want that to be misinterpreted by kids from the hood."

Private school wasn't an option. Her husband Andrei, Ashlee's father, was serving time, and Angelia didn't think she could make tuition on her salary as a legal assistant. Riding the bus one day, she saw a sign about choosing a charter school. She called the number, attended a charter school fair, and settled on the SEED School.

Ashlee's time at SEED has not been without turbulence. She has found the work challenging—skipping a grade in the D.C. government schools doesn't necessarily mean one is working at grade level—and the attitude that her mother so worried about has continued to cause problems. Ashlee is the first one to admit it. "I get in trouble with my mouth," she confesses. Ashlee was suspended for a week during her first year, which at SEED meant she was sent home for home learning. But SEED includes parents in the schooling process: Angelia has been called in more than once to discuss Ashlee's progress, and attitude, with the school principal.

Ashlee has spent a month and a half on probation. Still, nobody's getting beaten, she's not being harassed for learning, and she's planning to attend college. She'd like to go to Stanford, which she visited last year with other students from SEED.

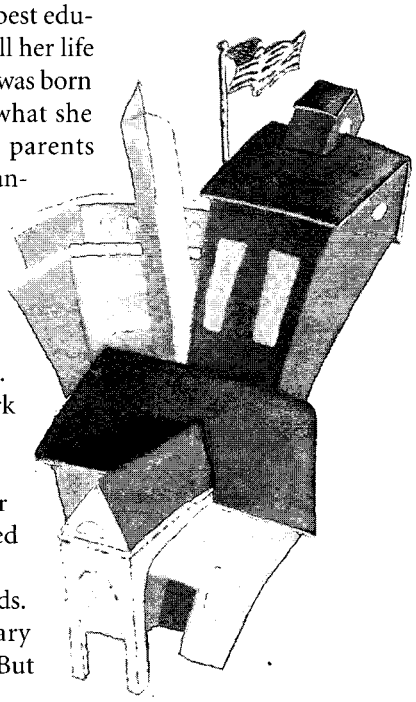
If the demand for scholarships across the country demonstrates anything, it's the deep dissatisfaction of city parents with their assigned government schools. People just don't give up free services, or services they've already paid for, to spend 10 percent or more of their income to purchase similar services. Yet this is exactly what the 1.25 million parents who applied for Children Scholarship Fund scholarships last year did.

"These people are low-income, yet they are willing to give up a free education to pay for one with significant costs," says NYU's Viteritti, who is appalled by the political effort to block school choice. "The hypocrisy behind it. The political leaders who say we need to support public schools don't have to send their kids to public schools," he observes. "I don't know how long it can be sustained."

However hard it may be for Bill Clinton, Al Gore, and Jesse Jackson—who send their kids to the best schools money can buy—to keep low-income parents from exercising school choice, it's harder yet for parents with scholarships to keep their kids in school, uniforms, and extracurricular activities. Rose Blassingame, for example, is sharing one bedroom with three of her granddaughters, just one sacrifice she is willing to make to keep her kids enrolled in private schools.

"The political leaders who say we need to support public schools don't have to send their kids to public schools," observes education critic Joseph Viteritti. "I don't know how long the hypocrisy can be sustained."

Like Bernice Gates, Blassingame wants the grandchildren she is raising to have the best education they can get. Rose has struggled all her life to be educated. The oldest of 14 kids, she was born and raised in Washington, attending what she thinks were then better schools. Her parents thought the way for a woman to gain financial security was through marriage. When she was 14, her father pulled her out of school to get married. Fifteen months later, she had her first child. Another 15 months passed and another child came. She went to work at D.C. General Hospital, where she would work for the next 29 years. She was 17 years old, working an eight-hour day and attending school at night. At 19, she left her husband, took her two babies and moved into her grandmother's basement.



Now, at 49, she's rearing four grandkids. Rose was satisfied with the elementary school her eldest, Franciscoe, attended. But

"If you are going to school and are afraid to go, no matter how well you're taught, you're not going to learn anything," says Rose Blassingame (below center) whose grandson Franciscoe (above) is now a freshman at Archbishop Carroll High School.

when she started looking for middle schools—and she visited just about all of them—she didn't like what she saw. "I found out there were some good ones," she says. But the best, Jefferson, was unavailable.

Her requirements weren't unreasonable. She was looking for good education in a safe environment. "If you are going to school and are afraid to go, no matter how well you're taught, you're not going to learn anything," she says.

She found private schools expensive. But she was ready to make the sacrifice and pay the $2,600 it would take to put Franciscoe in St. Thomas More. In 1997, a friend told her about the Washington Scholarship Fund (WSF). She called, was invited down for an interview, and was offered a scholarship for Franciscoe. She then decided to send his sister, Diamonesha, to St. Thomas More, too, and pay the same amount. This year, her youngest, Lapria, started kindergarten at St. Thomas More. Diamonesha is in second grade, and Franciscoe is now a freshman at Archbishop Carroll.

All this comes at considerable cost. Last year, Blassingame's portion of tuition at St. Thomas More for Franciscoe and Diamonesha was $175 a month. This year it's down to $150, thanks to assistance from the archdiocese. In addition, she faced miscellaneous expenses that parents don't face with government schools and that don't count as costs when WSF scholarships are calculated. Franciscoe's uniforms, for example, cost $670. His books cost another $540.

Covering these costs means giving up the monthly meal out, a *summer* amusement park trip, and visits to the beauty parlor. "I haven't been to the hairdresser in three years," says Rose. For Franciscoe, a polite child who answers question with a disarming "yes, sir" or "no, sir" followed by a toothy smile, it meant spending all but $31 of the $347 he earned at his summer job on the gray slacks, white shirts, and green blazer that constitute his uniform.

And then there are the living quarters. Seven hundred dollars a month buys Rose and her five housemates a two-bedroom apartment in the city's southwest quadrant. Franciscoe gets one room. Rose's aunt, who has been living with her for 13 years after spending most of her life on the streets, gets the couch. Rose, Lapria (5), Diamonesha (7), and Shantese (8) share the other bedroom. "Look around," Rose says, gesturing around her comfortably furnished but crowded apartment. "No one here has space. There's nowhere to go to be alone."

After a year of having Diamonesha in private school, Rose can see where the local government schools are lacking. "The kids who went to pre-K at St. Thomas More were already reading," she explains with some surprise, as if she'd been duped. "The public school kids were just ready to read."

Diamonesha had to catch up, but after a year she made the principal's honor roll. For Franciscoe it's been a tougher haul. His first year at St. Thomas More was challenging, and he struggled at first to earn C's and B's. There were many nights when Franciscoe and Rose stayed up past midnight doing homework. But his academics improved, and the next year he earned mostly B's and some A's. Now at Archbishop Carroll, Franciscoe is again struggling with English and religion courses, and Rose thinks she will have to get him a tutor. "He started at a good school at a later date. That's what hurting him," says Rose. "He got into the good school too late."

Franciscoe, who wants to attend Howard University and become a doctor or a lawyer, will probably succeed. But Rose's late date observation is borne out in the experience of others as well as hard data. A 1997 report from the D.C. Control Board on the city's schools concluded that "the longer a student stays in the District's public school system, the less likely they are to succeed." On the Stanford 9 Achievement Test, one in three D.C. fourth graders scored "below basic" on reading. One in two graduating seniors did. On math, three in ten fourth grade students and three in four seniors scored "below basic."

Private and charter school principals report that the longer students stay in government schools, the longer it takes them to catch up to grade level, if they ever do. Nelson Smith, executive director of the D.C. Public Charter School Board, says that many charter school principals were shocked at how far behind their kids were. One high school, which started with a single ninth-grade class, held back three-fourths of its entering class.

Voucher opponents love to point out that government schools must take everyone, while private schools are able to set standards, without any government oversight, and select their students. As D.C. Delegate Eleanor Holmes Norton claimed on the floor of the House, "Choice, therefore, will not rest with the parents but with the religious and private schools that will apply their own standards to the admission and retention of each child."

A related argument charges that few private schools exist in the price range of the vouchers, and the ones that do are of poor quality. Said Rep. Albert Wynn (D-Md.) on the House floor: "This notion that there is going to be this great choice for families is really a mistake. It really is a fraud. They are not going to have the choice to go to Sidwell Friends or St. Albans and the great private schools."

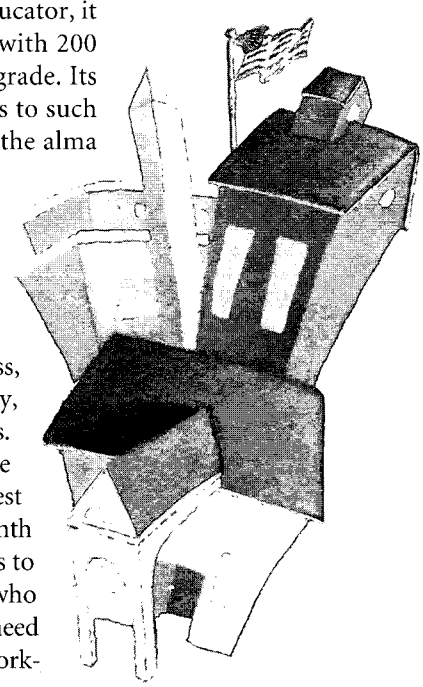
Such arguments are infuriating to parents of public school students, especially in the District of Columbia, where one in 10 students is deemed in need of special education. For roughly 1,000 of these students, the D.C. government schools do offer something—a gold-plated government-funded voucher to a private institution. The institutions to which the district sends its special-ed students are quite expensive. In 1997, the last year for which the D.C. schools provide data, it spent $21 million to send 1,079 students to private institutions—in effect, a $19,500 voucher. That same year, Democrats in Congress claimed that $7 million in scholarship funds would destroy government schools.

Some students require yet higher expenses. Benjamin Eby, whom *The Washington Post* describes as a "bright student who had writing and behavior problems," needed $22,000 to attend a private school in Vermont. While Rose Blassingame shares a bedroom with three grandchildren, the D.C. government was paying for plane tickets, ski lessons, and a computer for Eby.

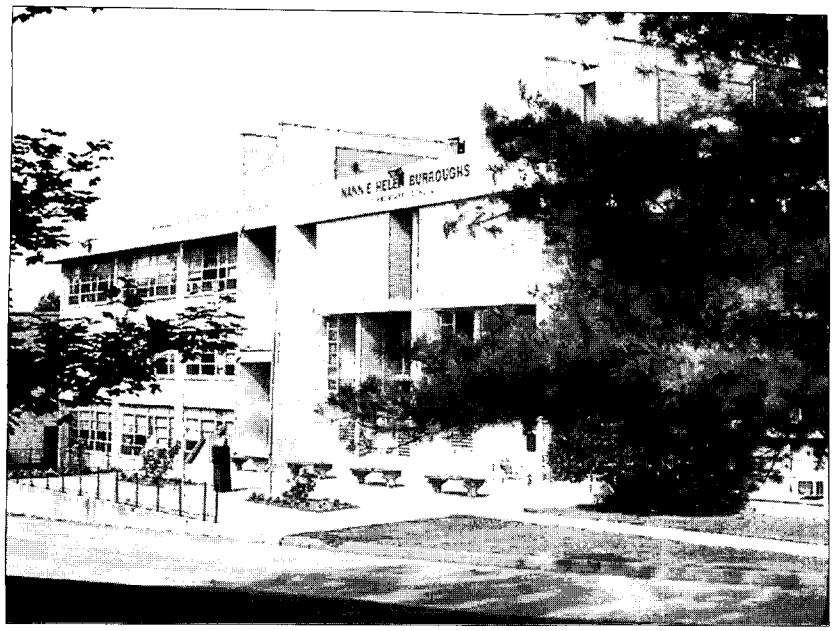
Diamonesha (left), Lapria, and Shantese. Diamonesha and Lapria attend St. Thomas More on private partial scholarships. Covering these costs means giving up things, says their grandmother Rose. "I haven't been to the hairdresser in three years."

Of course, there are private schools with lower tuition, some in Washington. Twenty-three WSF-supported kids attend Nannie Helen Burroughs School, atop a hill in the far northeast corner of town. The school looks out on a welcoming playground, with a yellow-railed jungle gym amid leafy trees, and, across the street, a burned-out third-story apartment.

Founded in 1909 as a religious girls' school by the celebrated Burroughs, an African-American author, orator, businesswoman, and educator, it is today a full-service private school, with 200 students from pre-K through seventh grade. Its graduates have earned full scholarships to such schools as the well-known St. Albans, the alma mater of school-choice opponent Al Gore.



For $4,000 a year, less than half of what the public-school system spends on a student, Nannie Helen Burroughs offers parents classes of no more than 20 kids, classrooms wired for Internet access, a computer center, a library, Bible study, and a plethora of extracurricular activities. Principal Shirley Hayes knows all of the students and their parents. She doesn't test kids for admission, but after the first month of school she meets with all her teachers to discuss how each child is doing. Those who need remediation receive it. Those who need "enhancement"—the current term for work-



Retirement Community: "Many of my teachers are retired people on annuities. They left [the public schools] because of the bureaucracy, but they still have a desire to teach," explains Shirley Hayes (inset), head of the Burroughs School which has 23 WSF-funded students in attendance.

ing ahead—get that as well. Each student is tested in the spring. In addition, the school's counselor, a retired D.C. government school employee, stands ready to test any child, the results ready the same day, to diagnose any problems.

Hayes, like every other person in this story, is no enemy of public education. She spent much of her life in the city's schools, which she attended as a student and worked in as a teacher for 12 years, then 23 years more as a principal. In 1990, she won a *Washington Post* award for excellence, which hangs on her wall. After retiring, she took a six-month temporary assignment at Burroughs. That was six years ago.

Seventeen of her 38 staff members are also former government school employees. Says Hayes, "They left because of the bureaucracy, but they still have a desire to teach." With their government pensions, they are able to accept the lower salaries at Burroughs. "Many of my teachers are retired people on annuities," says Hayes. "Private schools don't pay well, so there's a lot of turnover. Mine don't leave."

Turnover may not be a problem for Hayes, but it can be for some scholarship students. Families that hit a tough financial stretch may be forced to remove their kids from private schools. Douglas Dewey, executive vice president of the Children's Scholarship Fund, expects one in six of the program's children to give up the scholarships. Private school principals say the most common reason parents leave is financial.

Bernice Gates, who swore an oath to God and herself that she'll never put her four privately schooled kids back into public schools, was almost forced to do just that earlier this year. Gates moved from her friend's basement, buying a four-bedroom home in Northeast Washington with help from a city government program. Her finances became even tighter, and she fell behind on her tuition payments. She hasn't heard back on a social work job she applied for in the D.C. government schools, and she's currently applying for overtime at her job in the D.C. Department of Health. If that doesn't come through, a noticeably saddened Gates says, she'll try to pick up another part-time job, although it's not clear when she'd have the time to work.

Meanwhile, her three youngest are no longer at Calvary Christian Academy. Having gotten into a financial bind, Gates was forced to move them to a less expensive school, which she says was particularly traumatic for Derek, who'd been in CCA since starting school. She's moved Derek and William to Holy Redeemer, the school that she credits with saving Silky's life.

Government school enthusiasts say we need to fix all public schools, not just give a few students a way out. Vouchers are frauds, they claim, since they don't pay full freight and often lead to challenges like those Gates is facing. We can expect to hear from our presidential candidates about education, especially government education. Republican hopeful George W. Bush is running soft TV ads in which he avers, "We should all make this solemn commitment: That every child is educated," and in which he promises to "challenge failure with charters and choice." On the Democratic side, Bill Bradley or Al Gore will talk solemnly about how we must fix public schools.

Rose Blassingame, testifying before the House Budget Committee in October, provided the appropriate response to the fix-the-schools argument. After apologizing for being self-interested, Blassingame told the congressmen about how she had heard a commentator on the radio say it would take six or seven years to fix D.C.'s schools. Said Blassingame, "Franciscoe doesn't have that long." ◆

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Can we handle the *Truth* about Marijuana?

MYTH: Marijuana is a gateway drug.

FACT: For every 104 people who have used marijuana, there is only one regular user of cocaine and less than one heroin addict. (1)

MYTH: Marijuana is addictive.

FACT: Less than one percent of people who consume marijuana do so on a daily or near daily basis. An even smaller minority develop dependence on marijuana. Withdrawal symptoms, if experienced at all, are mild. (2)

MYTH: Marijuana lowers motivation.

FACT: For twenty five years, researchers have searched for a marijuana-induced amotivational syndrome and have failed to find it. Of course, people who are constantly intoxicated, no matter what the drug, are not likely to be productive. (3)

MYTH: Higher concentrations of THC make marijuana more dangerous.

FACT: There is no possibility of fatal overdose from smoking marijuana, regardless of potency. High potency marijuana may be less harmful to the lungs because people can use less to achieve the desired effects. (4)

MYTH: Marijuana causes brain damage.

FACT: No medical test used to determine brain damage has indicated brain damage in humans who use marijuana — even after long-term use. (5)

So, why did we arrest 642,000 Americans last year for marijuana offenses?

SOURCES: **(1)** Department of HHS, *National Household Survey on Drug Abuse*, 1997. **(2)** Department of HHS, *National Household Survey on Drug Abuse*, 1997; Jones, r.t. et al, "Clinical Relevance of Cannabis Tolerance and Dependence," *Journal of Clinical Pharmacology* 21:143-526 (1981). **(3)** Pope, H.G. et al, "Drug Use and Life Style Among College Undergraduates in 1989: A Comparison With 1969 and 1978,: *American Journal of Psychiatry* 147:998-001 (1990); Kandel, D. et al, "The Impact of Drug Use on Earnings: A Life-Span Perspective," *Social Forces* 74:243-270 (1995). **(4)** Department of Health and Human Services, "Marijuana and the Cannabinoids," pp., 131-44 in *Drug Abuse and Drug Abuse Research*, Third Triennial Report to Congress from the Secretary (1991). **(5)** Hannerz, J. and Hindmarsh, T. "Neurological and Neuroradiological Examination of Chronic Cannabis Smokers," Annals of Neurology 13:207-10 (1983); Stuve, F.A. and Straumania, J.J., "Electroencephalographic and Evoked Potential Methods in Human Marijuana Research Historical Review and Future Trends," *Drug Development Research* 20: 369-88 (1990).

A complete discussion of the effects of marijuana is available from *Marijuana Myths / Marijuana Facts: A Review of the Scientific Evidence* by Lynn Zimmer, Ph.D. and John Morgan, M.D. available from Bookworld Services 1-800-444-2524.

Visit Drug War Facts at: www.drugsense.org

Common Sense for Drug Policy Foundation Kevin B. Zeese, President, 703-354-5694, 703-354-5695 (fax), csdp@drugsense.org

Interviewed by Jacob Sullum and Michael W. Lynch

COLD COMFORT

Economist John Lott discusses the benefits of guns—and the hazards of pointing them out.

Until recently, when he bought a 9-mm Ruger after his own research impressed upon him the value of gun ownership, John Lott had no personal experience with firearms, aside from one day of riflery in summer camp when he was 12. That fact did not stop a reviewer of Lott's 1998 book, *More Guns, Less Crime* (University of Chicago Press), from labeling him a "gun nut." Writing in *The American Prospect*, Edward Cohn also identified Lott as "a leading loon of the Chicago School of economics, known for its ultra-market ideology." But that was gentle—a back-handed compliment, even—compared to the attacks from anti-gun activists, who accused Lott of producing his landmark study at the behest of the gun industry.

Lott, now a senior research scholar at Yale Law School, used to be the John M. Olin Law and Economics Fellow at the University of Chicago. That position, like similar ones at other major universities, was endowed by a foundation based on the personal fortune of the late John M. Olin, former

PHOTOS: MICHAEL MARSLAND, YALE OFFICE OF PUBLIC AFFAIRS

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chairman of the Olin Corporation. Among many other things, the Olin Corporation makes Winchester ammunition. These facts led Kristen Rand of the Violence Policy Center to conclude that "Lott's work was, in essence, funded by the firearms industry"—a charge that was echoed by other gun control advocates, including Charles Schumer, then a Democratic representative from New York and now a senator.

Never mind that assuming the Olin Foundation takes orders from "the firearms industry" is like assuming the Ford Foundation does the bidding of automakers. Never mind that Olin fellows are chosen by faculty committees, not by the foundation (with which Lott never had any contact). Proponents of gun control were desperate to discredit Lott, because his findings contradicted their dark predictions about what would happen if states allowed law-abiding citizens to carry concealed handguns.

Analyzing 18 years of data for more than 3,000 counties, Lott found that violent crime drops significantly when states switch from discretionary permit policies, which give local officials the authority to determine who may carry a gun, to "shall issue" or "right-to-carry" laws, which require that permits be granted to everyone who meets certain objective criteria. That conclusion, first set forth in a 1997 paper that Lott co-authored with David Mustard, now an economist at the University of Georgia, heartened defenders of gun ownership and dismayed their opponents. Arguing that "shall issue" laws are beneficial, while other gun laws are ineffective at best, Lott quickly became one of the most widely cited—and reviled—scholars in the gun control debate.

Though it was the gun issue that brought Lott notoriety, it hasn't been the focus of his career. The 41-year-old economist, who earned his Ph.D. at UCLA, has published papers on a wide variety of topics, including professional licensing, criminal punishment, campaign finance, and public education. Last summer he published *Are Predatory Commitments Credible?* (University of Chicago Press), a skeptical look at theories of predatory pricing, and he is working on a book about the reputational penalties faced by criminals, a longstanding interest. In addition to his positions at Yale and the University of Chicago, Lott has served as chief economist at the U.S. Sentencing Commission and taught at UCLA and the University of Pennsylvania, among other schools. He lives in Swarthmore, Pennsylvania, with his wife and four children. Senior Editor Jacob Sullum and Washington Editor Michael Lynch talked to Lott at his Yale Law School office in mid-October.

"For the vast majority of people the bottom line is whether the presence of guns, on net, saves lives or costs lives. I think that's where you have to argue."

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Reason: How did you become interested in guns?

John R. Lott Jr.: About six years ago, I was teaching a class dealing with crime issues at the University of Pennsylvania, and it dawned on me that my students would be interested in some papers on gun control. It forced me to look at the literature systematically to decide what papers to assign to the class. I was

shocked by how poorly done the existing research on guns and crime was.

You had very small samples. By far the largest previous study on guns and crime had looked at just 170 cities within a single year, 1980. Most of the rest looked at, say, 24 counties or 24 cities within a single year. No one had tried to account for things like arrest rates or conviction rates or prison sentence lengths. And the studies were all very limited in the sense that they were purely cross-sectional, where you look at the crime rates across jurisdictions in one year, or [purely longitudinal], where you pick one city or one county and look at it over time.

It was basically because of that class that I saw the benefit to going out and trying to do it right. So I put together what I think is by far the largest study that's ever been done on crime. The book has data on all 3,000-plus counties in the U.S. over an 18-year period. And simply having that large a data set allows you to account for hundreds of factors, thousands of factors, that you couldn't have accounted for in those smaller data sets.

Reason: What has been the most gratifying response to the book? Do you know of any criminologists whose views have been changed by your research?

Lott: Some well-known people like [University of Pennsylvania criminologist] John DiIulio and [UCLA political scientist] James Q. Wilson have said very nice things about the study. I think it's caused DiIulio to look at these issues differently, and there are other criminologists I know of who have been amazed by how strong the data are. I've done lots of empirical studies, and the regularities that you see here, in terms of the drops in violent crimes right after these laws go into effect, are very dramatic.

The intensity of the issue on both sides is something I wouldn't have expected before I got into it. I've been involved in a lot of debates, and people tell me, "You should have anticipated this before you did the study." But I've written about 80 academic articles, and the interest in this has been so outside the range of experiences I've had before. With the vast majority of articles, you're happy if you can get 10 people to read it.

Reason: The thrust of your argument in *More Guns, Less Crime* is easy enough to understand. But the details of the evidence you cite are hard to follow for anyone who is not trained in econometrics. Does it bother you that people who support the right to keep and bear arms are apt to accept your conclusions at face value, while those who are inclined to support gun control will tend to reject your findings, even though few people in either group are equipped to evaluate the evidence?

Lott: My guess is that [my critics] assume that the vast majority of people who hear their claims are not going to even look at the book. So they say, "Lott didn't account for poverty." Or they say, "Lott didn't account for other types of gun laws." Those are things that are easy to evaluate: Either I did, or I didn't. But I think they feel that they can get away with making those claims, because it'll be only a tiny fraction of 1 percent who will go and buy the book or get it from the library. I've never been involved in a debate like this, because in your normal academic debate, where there are 10 people involved and they've all read the paper, if somebody says, "Professor X didn't account for other gun laws," everybody else in the room would laugh, because they would know it was an absurd claim.

I don't think that most of the comments [the critics] are making are really that difficult to understand. One of the claims, for instance, is that I'm assuming that when these laws are passed there will be a one-time drop in violent crime rates, and it should be the same across all places that adopt these laws. That's absurd. I don't know how much time I spend in the book saying that the level of deterrence is related, according to the data, to the probability that people are going to be able to defend themselves, and the rate at which people get permits changes over time. When you pass these laws, not everybody who eventually is going to get a permit does it the first day. Fifteen years after these laws go into effect, you're still seeing an increasing percentage of the population getting these permits and a decreasing rate of violent crime because of the additional deterrence.

I spend lots of time in the book talking about why you don't expect the drop in crime to be the same in all places. ...In more urban areas [of states with discretionary permit laws], public officials were especially reluctant to issue permits. So when you change to a nondiscretionary rule, the biggest increases in permits tended to be in these urban areas, and that is where you observe the biggest drops in violent crime.

Reason: Your analysis shows that liberal carry permit policies are associated with lower crime rates even after controlling for a variety of factors that might also have an impact on crime. In the book you concede that some other variable that you did not consider could be responsible for this association. Yet at the end of the book, you write, "Will allowing law-abiding citizens to carry concealed handguns save lives? The answer is yes, it will." Do statements like that go too far?

Lott: I don't think so. That's one of the last sentences in the book, and at that point the evidence is pretty overwhelming. There are different types of information, and they're all pointing in the same direction.

After these laws are adopted, you see a drop in violent crime, and it continues over time as the percentage of the population with permits increases. If I look at neighboring counties on either side of a state border, when one state passes its right-to-carry law, I see a drop in violent crime in that county, but the other county, right across the state border, in a state without a right-to-carry law, sees an increase in its violent crime rate. You try to control for differences in the legal system, arrest and conviction rates, different types of laws, demographics, poverty, drug prices —all sorts of things. You look at something like that, and I think it's pretty hard to come up with some other expla-

nation. I think you're seeing some criminals move [across the state line].

You find the types of people who benefit the most from these laws. The biggest drops in crime are among women and the elderly, who are physically weaker, and in the high-crime, relatively poor areas where people are most vulnerable.

There are five or six things that one could point to that confirm different parts of the theory. I haven't heard anybody come up with a story that explains all these different pieces of evidence....Since you have all these states changing their laws at different times, it becomes harder and harder to think of some left-out factor that just happened to be changing in all these different states at the same time the right-to-carry law got changed.

Reason: A review of your book in *The American Prospect* claims that "his results are skewed by the inclusion of data from tiny counties with trivial rates of violent crime. In fact, when you consider only large counties and exclude Florida from the sample, his case completely falls apart." How do you respond?

Lott: When you drop out counties with fewer than 100,000 people, if anything it actually increases the size of the effect. What [the reviewer is] saying is that if you not only drop out counties with fewer than 100,000 people—which is 86 percent of the counties in the sample, so it's not just a few small counties that we're talking about—but also drop out Florida, then the changes in two of the violent crime categories, when you're just looking at the simple before-and-after averages, aren't statistically significant. But the results still imply a drop, and for robberies and aggravated assaults you still get a drop that's statistically significant.

Now, I think it's somewhat misleading to look only at the simple before-and-after averages. Take the case where violent crime rates are rising right up to the point when the law goes into effect and falling afterward, and let's say it was a perfectly symmetrical inverted *V*. If I were to take the average crime rate before the law goes into effect and the average afterward, where the point of the *V* is when the law changed, they're going to be the same. Does that mean the law had no impact? When you drop Florida from the sample, [the results] look more like this inverted *V* than they do when Florida is in there. So I would argue that it strengthens the results, if what you care about is the change in direction.

In any case, the bottom line to me is this: I wanted all the data that were available....I didn't pick and choose, and when somebody drops out 86 percent of the counties along with Florida, you know they must have tried all sorts of combinations. This wasn't the first obvious combination that sprang to mind. And it's the only combination they report....If, after doing all these gymnastics, and recording only one type of specification, dealing with before-and-after averages that are biased against finding a benefit, they still find only benefits, and no cost, to me that strengthens the results.

Reason: University of Florida criminologist Gary Kleck recently told *The Salt Lake Tribune* that "Lott has convincingly demonstrated there is no substantial detriment" from "shall issue" laws. But he questioned whether these laws could have as substantial a deterrent effect as you suggest. Kleck provided a blurb for your book, and his work is often cited by opponents of gun control. Why do you think he has trouble buying your conclusions?

Lott: Gary has had a strong opinion for a long time that, on net, guns neither reduce or increase crime. He thinks it's essentially a wash. And I'm not sure I understand how he comes to that conclusion, particularly given the survey data that indicate that many more violent crimes are stopped with guns than are perpetrated with guns. But it is something that he has written and felt strongly about for a long time. Now Gary may think that there's something else that's being left out that maybe could explain these changes in crime rates. If he can tell me what that factor is, I'd be happy to try to test it.

Reason: Do you still hear the argument that you're in the pay of the gun industry, or has that been discredited?

Lott: I think the gun control people are going to continue to bring it up. I've been in debates this year with people from Handgun Control Inc. and other gun control groups in which they asserted flat-out that I've been paid by gun makers to do this study.

Reason: When they raise this charge, how successful are you in making the point that people should be able to assess evidence and arguments on their merits and that your motives don't matter?

Lott: Well, most people aren't going to look at the data. They're not going to have the data in front of them. The credibility of the data and the message depends on whether or not they believe that the person who's telling them about the data is credible. And I think the gun control groups feel that it's a win to the extent that they even divert three minutes of a show to talking about this issue. Even if it doesn't stick in people's minds, it's still three minutes that I couldn't talk about something else.

Reason: In a working paper you wrote with University of Chicago law professor William Landes [available at papers.ssrn.com/paper.taf?abstract_id=161637], you conclude that "shall issue" laws are especially effective at preventing mass public shootings. Given that the people who commit these crimes seem to be pretty unbalanced, if not suicidal, how does the deterrent work?

Lott: Most of these attacks do end in the death of the attackers themselves, frequently from suicide, but also because they're killed by others. But part of what's motivating them is the desire to harm other people, and to the extent that you can take that away from them, I think you reduce their incentive to engage in these attacks. Whether they do it just because they intrinsically value killing people or whether they do it because of the publicity, the fact that there might be a citizen there who can stop them well before the police are able to arrive takes away, in their warped minds, some of the gain from the

"If I put a sign saying "This is a gun-free zone" in front of my home, would I think that people who are intent on attacking my home would be less likely, or more likely, to harm my children and my wife?"

crime, and stops a lot of them from doing it.

Reason: You often say, based on surveys, that Americans use guns to fend off criminals more than 2 million times a year. But in the book, you note that people who report incidents of armed self-defense could be mistaken or lying. How big a problem is that, and how confident can we be that the true number is more than 2 million?

Lott: Well, 2 million is the average of the various surveys. Different problems may plague different surveys, and the problems can go in both directions. You may have questions that weed out people who shouldn't be weeded out.

Reason: Like "Do you own a gun?"

Lott: Or it could be you ask them "Has a crime been committed against you?" before you ask them whether they've used a gun defensively.

Reason: And they might not consider it a crime if it wasn't completed?

Lott: Right. And so, we have errors that can exist on both sides....But that's the only type of evidence that we have on this....The most striking thing to me is the comparison between the results from these surveys and [survey data on] the number of violent crimes that are committed with guns each year. You see many more crimes that are averted by people who defend themselves with guns. I think that difference—even though both sets of numbers can be tainted for all the same reasons—is what's striking.

Reason: You say that resistance with a gun is the safest option when confronted by a criminal. What's the basis for that conclusion?

Lott: You hear claims from time to time that people should behave passively when they're confronted by a criminal. And if you push people on that, they'll refer to something called the National Crime Victimization Survey, a government project that surveys about 50,000 households each year. If you compare passive behavior to all forms of active resistance lumped together, passive behavior is indeed slightly safer than active resistance. But that's very misleading, because under the heading of active resistance you're lumping together things like using your fist, yelling and screaming, running away, using Mace, a baseball bat, a knife, or a gun. Some of those actions are indeed much more dangerous than passive behavior. But some are much safer.

For a woman, for example, by far the most dangerous course of action to take when she's confronted by a criminal is to use her fists. The reason is pretty simple: You're almost always talking about a male criminal doing the attacking, so in the case of a female victim there's a large strength differential. And for a woman to use her fists is very likely to result in a physical response from the attacker and a high probability of serious injury or death to the woman. For women, by far the safest course of action is to have a gun. A woman who behaves passively is 2.5 times as likely to end up being seriously

injured as a woman who has a gun.

Reason: Why does the mainstream press seem to downplay the value of armed self-defense?

Lott: One question is, Why don't they report people using guns defensively? If I have two stories, one where there's a dead body on the ground vs. another where, say, a woman has brandished a gun and a would-be rapist or murderer has run away, with no shots fired and no dead body on the ground, it's pretty obvious to me which one of those is going to be considered more newsworthy. It doesn't require any conspiracy. Now if we care about policy, if we care about what types of actions are going to save the most lives, or prevent the most crimes, we want to look at both of those cases: not only the newsworthy bad events but the bad events that never become newsworthy because they don't occur.

But I don't think that explains everything. One example is gun deaths involving children. My guess is that if you go out and ask people, how many gun deaths involve children under age 5, or under age 10, in the United States, they're going to say thousands. When you tell them that in 1996 there were 17 gun deaths for children under age 5 in the United States and 44 for children under age 10, they're just astounded. There's a reason why they believe these deaths occur much more frequently: If you have a gun death in the home involving a child under age 5, you're going to get national news coverage. Five times more children drown in bathtubs; more than twice as many drown in five-gallon water buckets around the home. But those deaths do not get national news coverage.

This type of news coverage has consequences, because it affects people's perceptions of the benefits and costs of having guns around. Concentrating on gun deaths in the home, exaggerating the risks of that, creates a false impression. People are going to die because of that false impression. They're not going to have guns in the home, even though that's by far the safest course of action for them to take when they're confronted by a criminal. You may prevent some of the accidental deaths, but you're going to create other types of deaths because people won't be able to defend themselves.

I think the debate would be so different now if, even once in a while, some of the life-saving uses of guns got some attention in the news. A couple of the public school shootings were stopped by citizens armed with guns well before the police were able to arrive. Or take the case of the day trader shooting in Atlanta, which got huge attention. Within 10 days after that, there were three separate attacks in the Atlanta area that were stopped by citizens with guns, in two cases permitted concealed handguns. They got no attention outside of the local media market.

Reason: You've said that if Chicago Mayor Richard Daley, who filed one of the first city-sponsored gun lawsuits, really believes guns are so bad, he ought to take them away from his bodyguards. Explain that comment.

Lott: Daley has been arguing that there's no benefit from owning guns. Yet he has a whole set of full-time bodyguards following him every place he goes. He won't even think about visiting some of the more dangerous areas in Chicago without his bodyguards. But there are poor people who have to live in those areas, who live there at great risk, and he's not willing to let them own guns in order to protect themselves....I view it as very hypocritical, that Daley can understand the defensive benefits of guns when it comes to himself, but he's not willing to afford that same level of protection to the poorest, most vulnerable people in his city.

Reason: You've pointed out that somebody who gets turned down for a gun purchase after a background check may simply get the gun by other means. That's a legitimate point, but don't you also have to consider the possibility that people are deterred from even trying to get a gun because they know there's going to be a background check and they know they won't pass it?

Lott: They may just try to get it the illegal way to begin with. Personally, I don't believe the claims that the Clinton administration makes about the number of people who are stopped from buying a gun. My guess is that to the extent that people *are* stopped, the vast majority of them are people who may have something on their record from 30 years ago, and they don't realize that it prevents them from buying a gun. These are people who may pose no risk to anybody. In fact, that's one of the reasons why I think there's such a low prosecution rate of those people.

Reason: The feds say they don't have the resources to prosecute.

Lott: I don't think that's it at all. I think you have prosecutorial discretion. I think that you have a case where somebody who's 50 years old may have done something as an 18-year-old that was wrong. The prosecutor looks at it and says, "This guy has been an upstanding member of the community for 30 years, and he had this one run-in as a teenager. We don't really think that he intended to violate the law. We're not going to send the guy to jail for doing this."

Reason: The National Rifle Association criticizes the Justice Department for not prosecuting enough of these cases.

Lott: I think that's a mistake. They're also talking about prosecuting cases where guns were brought onto school property. My guess is that a prosecutor would bend over backwards to bring a case against a juvenile who had brought a gun onto school property. He doesn't want to not bring the case and then have something bad happen later on. That would be disastrous for his career.

But let's say a kid's gone hunting in the morning before school. He has the gun in the trunk of his car, parks it in the school parking lot, and goes into school. Somebody finds out that he has a gun there. The prosecutor looks at the case and says, "This is a good kid, never done anything wrong. He probably just didn't realize he shouldn't have done this. Do I really want to send this kid to jail for three years for this type of violation?" It's wrong

to think that these prosecutors are making the types of mistakes that are being assumed.

Reason: You've criticized the NRA for doing a poor job of making its case. What should it be doing differently?

Lott: My biggest complaint with the NRA is that they're too defensive. It seems to me that some of the [mass shootings] that have occurred are a result of gun laws that are already on the books. Rather than talking about what new law should be put in place, we should ask to what extent have well-intentioned laws in the past caused us to get to point where we are right now.

It's only been since the end of 1995 that we've banned guns within 1,000 feet of schools by federal law. Right after the Columbine attack, a friend of mine dropped off his kids at a public school in Seattle, and he e-mailed me afterward, because there was a big sign in front of the school that said, "This is a gun-free zone." The question I had was, if I put a sign like that in front of my home, would I think that people who are intent on attacking my home would be less likely, or more likely, to harm my children and my wife? You may be trying to create a safe area for your family, but what you've ended up accidentally doing is creating a safe zone for [criminals], because they have less to worry about.

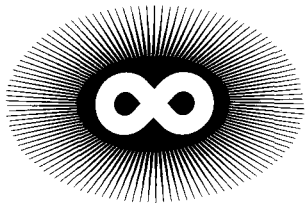
The thing that I'd like to see the NRA try to do is to say, when attacks occur, since we can't have the police every place all the time, why not let these people defend themselves? The people who get permits for concealed handguns tend to be extremely law-abiding. They've never done one of these attacks in the 70 years that we've had these types of permits. When these people lose their permits, and it's only a tiny fraction of 1 percent who do, it's usually for reasons that have nothing to do with posing a threat to other people. Laws [like the Gun-Free School Zones Act] are obeyed by honest, law-abiding citizens, not by people who are intent on carrying out attacks. And to the extent that you disarm the law-abiding citizens in certain areas, you increase the probability of these attacks, which perversely leads to calls for more regulations.

"To the extent that you disarm the law-abiding citizens, you increase the probability of gun-related attacks, which perversely leads to calls for more regulations."

Another example is gun locks. If I were with the NRA, I would emphasize the cost of constantly talking about this issue. You're actually endangering people's lives, for two reasons. One, you're exaggerating in their minds the risks of having guns in the home. And two, I would say it's not in everybody's interest to have a lock on their gun. If you live in a safe area and maybe have young kids, that might be fine. But if you live in a city, even if you have kids, I don't think it's really the wisest thing to have the gun locked up, because you're not going to be able to quickly access it to defend your family. And when you compare probabilities, accidental gun deaths in the home are trivial compared to the rate at which other types of deaths occur from crimes where innocent victims are attacked and a gun would benefit them.

Reason: Some advocates of gun rights base their claims mainly on the Second Amendment, while others offer a more utilitarian argument. Which approach is more effective?

Lott: I understand the constitutional arguments, but I think for the vast majority of people the bottom line is whether the presence of guns, on net, saves lives or costs lives. They may be able to understand in the abstract that having guns owned by civilians is some type of restraint on government, but I don't think most of them view that as a problem that they're facing any time soon. For them the bottom line is, What will save lives? And so I think that's where you have to argue.



Reason's 2nd Annual Dynamic Visions Conference

On the Verge: Creative Mixing on the Frontiers of Business, Society, Art, and Technology

February 19–21, 2000 (Presidents' Day Weekend)
Santa Clara Marriott • Santa Clara, California

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We look forward to seeing you Presidents' Day Weekend.

■ ■ ■

Confirmed Speakers:

- **Jhane Barnes**, designer, "Mathematics, Computers, and the Art of Textile Design"
- **Gregory Benford**, UC-Irvine astrophysicist, "Thinking Long in the Millennium"
- **Daniel Botkin**, UC-Santa Barbara ecologist, president, Center for the Study of the Environment, author of *Discordant Harmonies*, "The Future of Nature: How to Have Both Civilization and Nature in the 21st Century"
- **Charles Paul Freund**, senior editor, *Reason*, "Dark Verge? The Uneasy Case of Vienna 1900"
- **Neil Gershenfeld**, leader, physics and media group, MIT Media Lab, author, *When Things Start to Think*, "Things that Think"

- **Nick Gillespie**, executive editor, *Reason*, "Popular Culture on the Verge"
- **Lisa Graham Keegan**, Arizona Superintendent of Public Instruction, "Innovations in Education"
- **Grant McCracken**, Harvard Business School, author, *Plenitude* and *Culture and Consumption*, "Verge of Verges: Sir Francis Bacon at the Gates of Gilbraltar"
- **Christena Nippert-Eng**, sociologist, Illinois Institute of Technology, author, *Home and Work*, "Home and Work: Drawing the Boundaries"
- **Daniel Pink**, *Fast Company* contributor, "Free Agent Nation"
- **Steven Postrel**, UC-Irvine Graduate School of Management, "The Geek and the Dilettante: Sharing Knowledge Across Specialities"
- **Virginia Postrel**, editor, *Reason*, author, *The Future and Its Enemies*, "On the Verge: Exploring the Frontiers of Creative Encounter"
- **Adam Clayton Powell III**, vice president, technology and programs, The Freedom Forum, "Culture and Collision"
- **Richard Rodriguez**, author, *Days of Obligation* and *Hunger of Memory*, "Some Thoughts on the Burrito and the Browning of America"
- **Lynn Scarlett**, executive director, Reason Public Policy Institute, "Can Industry Save the Planet? The Rise of Industrial Ecology"
- **Michael Schrage**, columnist, *Fortune*, senior associate, MIT Media Lab, author, *No More Teams!* and *Serious Play*, "Serious Play"
- **Robert Zubrin**, author of *The Case for Mars*, "Mars Direct: Humans to the Red Planet Within a Decade"

To read descriptions of the talks, please visit our Web site at www.reason.com/dynamic/dynamic2000.html.

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For directions and reservations, the Santa Clara Marriott can be reached at 408-988-1500. Mention *Reason* to get our special rate of $89/night. The Santa Clara Marriott is located at 2700 Mission College Blvd., Santa Clara, CA 95052-8181 and is easily accessible from the San Jose Airport.

CROP BUSTERS

Self-righteous vandals lead a desperate, ill-informed campaign against genetically modified foods.

One night last August, a group calling itself Seeds of Resistance used machetes to hack down a half-acre plot of corn at a farm operated by the University of Maine. The crop's offense: It had been genetically engineered to resist herbicides.

This characteristic would reduce the number of herbicide applications needed, saving farmers money and reducing chemical runoff into water supplies. It could also reduce or eliminate tilling and hence control topsoil erosion. To gain these advantages, a specially chosen gene from another plant had been inserted into the corn.

For that, the corn had to die. Seeds of Resistance said it was sending "a message to those who seek to benefit from the risky endeavor of genetically engineering the food supply."

So far this year, anti-biotechnology vandals have struck 13 crop sites in the United States, from Maine to California. The attacks tell us much about biotech opponents, many of whom have increasingly abandoned rational persuasion in favor of "direct action" that shows contempt for the choices of the people they claim to represent.

By Michael Fumento

The U.S. vandals acknowledge a debt to overseas activists, especially in the U.K., where wrecking crops that offend one's sensibilities is commonplace. "Many thanks to our comrades in other countries for the inspiration to join them," declared a September communiqué from Reclaim the Seeds, one of the more active American crop-busting groups. The British attacks are not random and are not exclusively the work of tiny fringe groups. Some have been carried out by the world's most prominent environmentalist group, Greenpeace. Most environmentalist groups that don't participate nonetheless refuse to criticize the sabotage.

According to an August report in the London *Guardian*, between the U.K. and the Continent, more than 70 sites where biotech plants were being tested, out of an estimated 150 to 200, "have been wholly or partly destroyed, with almost 50 in the past 12 weeks." The British biotech-bashing Genetic Engineering Network, which gleefully claims that "over 80 [European biotech crop] trial sites have been decontaminated over the last two years," sent me a detailed list of 46 sites destroyed between January and mid-August.

On this side of the Atlantic, crop busters started late but are making up for lost time. "There was only one [attack] that I know of in the U.S. in 1998," says

PETER BENNETT

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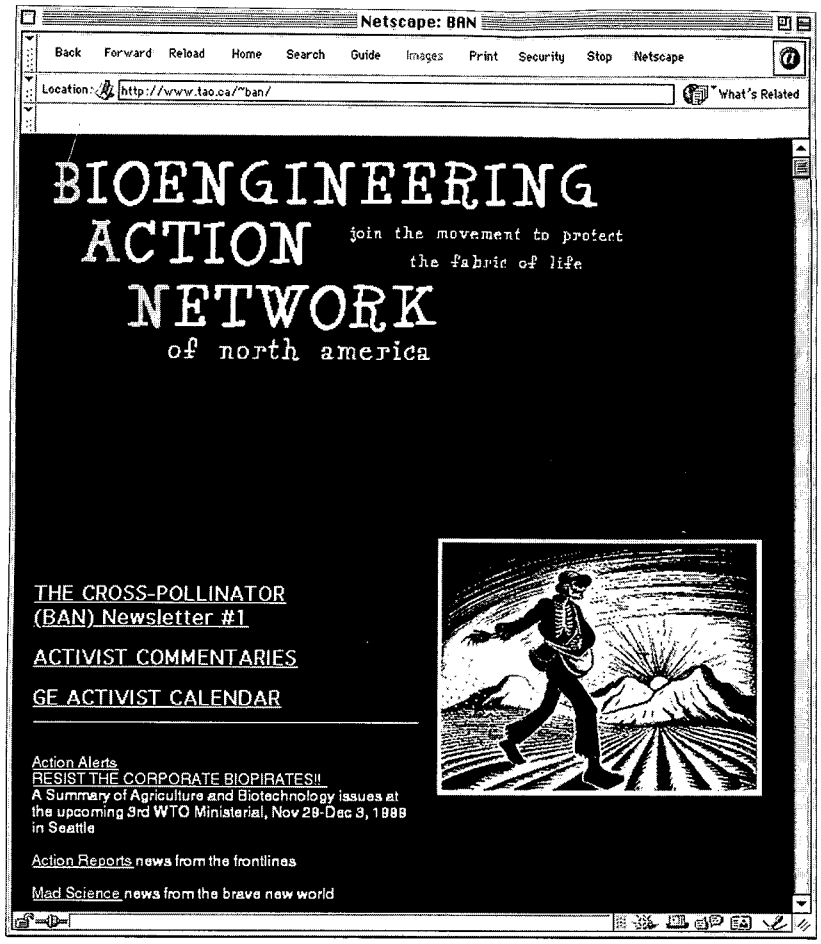
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Vegetable Stew: Eco-vandals have destroyed genetically altered crops from Maine to California.

Jeffrey Tufenkian, spokesman for the San Diego–based anti-biotech group Genetix Alert, which tracks and applauds crop wrecking. This year there were two attacks in July, three in August, seven in September. Only an end to the growing seasons seems to have kept the numbers from continuing their upward spiral. There was one attack in late October, but it consisted only of vandalizing a building where the corn had already been harvested. "These actions are just starting to expand over here," says Tufenkian. "But I think this is just the start of the trend of resistance to this new technology."

The British terra-terrorists

are aided by their government, which insists on giving out the exact locations of the test plots. (Notwithstanding this assistance, non-modified crops are often mistakenly destroyed.) The government is considering changing the disclosure policy, even as it gives out the locations of new test tracts. Though the U.S. government doesn't hand out maps to the homes of the biotech crops, the Bioengineering Action Network of North America (BAN), an anti-biotech group, has a Web site (www.tao.ca/~ban/) that claims to offer helpful hints.

Numerous groups with names that sound like high school sports teams, such as the Lincolnshire Loppers and Cropatistas in Britain and the Bolt Weevils and California Croppers in the U.S., are now joining in the fun. Britain's Genetix Snowball published a book describing the best tactics for stealing into a field at night and destroying it. BAN says a "Night-Time Gardener's Guide," which it describes as "a 'how-to' for would-be crop saboteurs," will soon be available on its site.

More than fields are coming under attack. On the last day of September, two groups wrecked sites growing melons, corn, and sunflowers in Woodland, California. They also disabled an irrigation system and vandalized three greenhouses. Earlier in the month, the Bolt Weevils whacked a biotech corn crop at Pioneer Hi-Bred's Minnesota facility, trampling 50 rows of research corn, damaging company vehicles, and spray-painting slogans ("Free the Seed" and "Stop Agribusiness") on sheds. The last confirmed attack as of this writing was by Seeds of Resistance against Pioneer Hi-Bred in Eau Claire, Wisconsin, on October 27. Genetix Alert's press release called the action "nonviolent," though the vandals themselves used the term *smash*, which has a rather violent sound to it.

The vandals say they won't stop with fields and surrounding facilities. "Crops, research facilities and corporate offices are all sources of this technological threat and should be targeted," say the Weevils. An anonymous e-mail message recently sent to growers of biotech crops declared: "All of a sudden 'venture capitalist' scum realize that biotechnology is not such a great investment and they flee with their bags of cash with them....Our view is that if corporations, governments and universities have any relationship to biotechnology, they are targets."

Even those who merely sell the products are being threatened. One British group calling itself Smash Genetic Engineering is warning of violence against clothing stores that use biotech crops such as pesticide-resistant cotton. Genetix Snowball threatens vandalism this autumn, "once we are certain who [the retailers] are." The famous British chain Marks & Spencer has already buckled under the threats by removing biotech foods from its shelves.

While their crimes are serious, the rationalizations and euphemisms served up by the crop busters are laughable. Consider a recent Greenpeace U.K. press release: "At 5:15 a.m. today in a peaceful direct action, a Greenpeace decontamination unit removed genetically modified pollution from the third farm-scale experiment to be disrupted in the U.K. over the last eight weeks." So trespassing on private land and ripping up crops is "peaceful," while destroying something you don't like is "direct action"

or "decontamination." And it was "pollution," not the science of transgenics, that was under attack.

Greenpeace U.K. Executive Director Lord Peter Melchett, who was arrested in July for personally "decontaminating" crops, claims vandalism "is not lawlessness," because "we act within strong moral boundaries." Thus the criminality of an act can be negated by the actor's opinion. If you feel morally justified in "peacefully decontaminating" your spouse via "direct action" with a shotgun, your actions are "not lawlessness."

Though these claims come from a nation that prides itself on civility, this is not civil disobedience. The peaceful American civil rights activists who risked, and sometimes lost, life and limb by seating themselves in "white only" establishments or drinking from segregated water fountains never pretended that they weren't lawbreakers. They acknowledged it and accepted incarceration, often accompanied by beatings. They questioned the morality of the law by making the authorities enforce it. That's civil disobedience. "We accept responsibility for the consequences of our action," Melchett claims. Yet after he was jailed for his "decontamination" outing, he sprung himself by complaining to the press that he would miss his already-paid-for vacation in Tanzania.

American groups have adapted the British euphemisms. Reclaim the Seeds speaks of its "nonviolent direct action," while the BAN Web site refers to "direct actionists." The U.S. groups also make similar claims of heroism. "We are risking jail and injury, as well as sacrificing time, energy and sleep," declare the Reclaimers. It's certainly conceivable that an overenthusiastic Reclaimer brandishing what they call "California Corn Cutters" could slice the Achilles tendon of another Reclaimer. But it hasn't happened yet. As for jail, not a single American crop vandal has been arrested so far.

Biotech crop trials are "backdoor commercialization of GM crops that nobody wants," says Doug Parr, campaigns director for Greenpeace U.K. "Sadly," he says, "when democracy fails, direct action is the only recourse. The authorities are not taking the correct action and unfortunately it has fallen to Greenpeace to protect everyone's interests."

While Greenpeace International's latest annual report, released in August, is titled "In the Name of the People," the eco-warriors insist they *are* "the people." Melchett calls his group's actions a "direct expression of 'people's power.'" One Genetix Snowball representative declared, "The public has made it clear they don't want [genetically modified] crops, and there is no need for these tests." Another insisted, "If the government isn't going to get involved, then it's up to us."

Never mind that the government *did* get involved when it approved the test plots—you can't grow genetically modified crops without regulatory permission—and stays involved as it continues to grant approvals. Never mind that this government was elected by the people and that the electorate's numbers swamp the combined membership of all the green groups.

This contempt for democracy has crossed the Atlantic. Brock Ohlee of the American crop vandalization group Future Farmers declares, "Direct action against corporate greed is both a political necessity and a moral imperative." Thus "the people have the right and the responsibility to fight back." Yet the Future Farmers give hints that they and the nation are at odds, as when they spell the name of the country as "U$A" or "Amerikkka."

After a corn crushing in Minnesota last September, the Bolt Weevils declared "a WARNING to the entire 'life-sciences' industry that opposition to its sinister plan is far more widespread than they think, and growing exponentially." That same month, Reclaim the Seeds ripped up a sugar beet field at the University of California at Davis, proclaiming "these acts as self-defensive measures on behalf of *all beings* against Monsanto, UC-D and the university system's corporate boot-licking, and the global GE [genetic engineering] takeover!" (Emphasis added). So it's not just "the people" any more. This group claims to speak for every living thing, right down to the lowliest amoeba. After crunching a corn crop at the same university, the group stated, "Modern agribusiness and genetic mutilation is a capitalist machine that must be dismantled," adding that vandalism "is a direct action that destroys corporate power and authority."

Sometimes it seems the groups can't decide whether they want to be revolutionaries or professional wrestlers. "Seeing their profits as a slap in the face of the earth and all its occupants, we took the liberty of paying them back," Seeds of Resistance said of its attack on the Eau Claire building. "We, Seeds of Resistance, smashed all the windows on one side of their disgusting building. Wisconsin is now another state that cannot hide from this growing resistance against GE culture."

Not to be outdone rhetorically, the Weevils declared, "We see what the corporations give back to the public." They give back "houses we cannot afford to live in" (notwithstanding that home ownership is at an all-time high) and "jobs our bodies cannot do for long without breaking" (notwithstanding that fewer jobs than ever consist of manual labor and occupational accident rates are at an his-

"Modern agribusiness and genetic mutilation is a capitalist machine that must be dismantled," says the group Seeds of Resistance. Vandalism "is a direct action that destroys corporate power and authority."

toric low). "Corporations," warned the Weevils, "give back to the people death."

Bio-engineering of food has become symbolic of every evil any corporation has perpetrated (or, more precisely, everything corporations have done that members of these groups don't like). Attacking biotech is therefore just another way of attacking capitalism and technology. The Luddite analogy is one that critics of environmentalism have overused, but here it fits almost too well.

We can always argue over politics, but whenever the crop busters venture into scientific territory, they trip over their shears. When Reclaim the Seeds "decontaminated approximately 7 acres of a 'Frankenfood' corn" in its third attack on the University of California at Davis, they invoked their "profound sense of the sacredness of life." Said the Seeds, "We believe that protecting the result of more than three billion years of evolution is a duty to ourselves, all living beings, and the generations to come."

They might be shocked to hear that probably every ear of corn that's been sold in the United States was created by man, using the forerunner of bioengineering called "cross-breeding." Instead of isolating a single gene or a few genes from one strain of corn and injecting it into the DNA of another, people crossed whole strains, hoping that the desired traits would be expressed. (It reportedly took Orville Redenbacher 30,000 attempts to make the ideal popcorn.)

This process apparently began over 5,000 years ago, when American Indians essentially created corn by combining two types of wild grasses. Modern hybrids were first commercialized in the 1930s. Humans have been doing such "tampering" with livestock for thousands of years as well. Ever see a wild cow or chicken? There are related creatures, but strictly speaking there's no such animal. Indeed, almost nothing we eat, aside from nonfarm fish and things whose names include the word *wild* (such as Ewell Gibbons' "wild hickory nuts"), is a product merely of undirected evolution.

The groups that attacked the Woodland, California, sites claimed to be part of "the growing movement to protect the fabric of life." If anything could be labeled "the fabric of life," it's simple DNA. There is no inherent difference between the DNA of "natural" plants and those created through selective gene transfer.

Reclaim the Seeds has also said its actions are necessary to "stop the massive destruction of biodiversity." But crop biodiversity began declining long ago, simply because farmers want the *best* strains, not the *most* strains. If anything, biotech may improve diversity by developing strains especially suited to a given area's temperature, rainfall, soil type, and pest threats.

Likewise, Reclaim the Seeds is exactly wrong when it says, "If you care about social justice and don't want to poison farm workers with pesticides and herbicides, you should resist genetic engineering." Actually, if you're worried about farm workers' exposure to pesticides, you should resist such propaganda. Probably the main p.r. problem biotech crops have right now is that almost all those currently grown do nothing *but* allow less use of pesticides (of which herbicides are a subcategory). There's nothing, therefore, to please consumers. Though the situation will soon change, as biotech foods that stay fresh longer and have more nutrients come to market, currently *only* farm workers and owners, along with the seed developers, benefit from transgenic crops.

The anti-biotech groups pay lip service to environmentalism, as with the Future Farmers' claim to "stand for environmental sustainability" and "community stewardship of resources." But it is the environmentalists who have been demanding reduced use of pesticides, and are now getting it thanks to biotech crops. They are the ones who (rightly) pushed the nation's farmers toward no-till agriculture to prevent topsoil erosion, a goal that is hardly served by destroying corn designed to reduce erosion, as Seeds of Resistance did in Maine. Likewise, it is hard to see the environmental rationale for destroying a plot of poplar trees developed to reduce the use of chlorine and energy during the pulping process, an act of sabotage carried out by an anonymous British group in July.

Despite the ways in which attacks on biotech crops work against the environment, I was able to identify only three environmentalist groups, two British and one American (the Environmental Defense Fund), that have decried such vandalism, and all the criticism has been mild. Many other groups have kept mum.

As for the mainstream British press, it has "uncritically embraced this phenomenon," says Frank Furedi, a sociology professor at the University of Kent at Canterbury. "The activists [say sympathizers in the media] are the good guys," who, "unlike sleazy politicians," are "untainted by corruption or self-interest" and are "portrayed as altruistic and idealistic souls whose motives are beyond reproach." Indeed, many British columnists have lauded the destruction of modified crops, while reporters routinely refer to the crop killers as

Plowed Under: A UC-Davis administrator surveys crops damaged by vandals.

NEIL MICHEL, AXIOM PHOTO

"protesters," a mild term, or even an accolade.

In the U.S., by contrast, the news media have shown no support for crop busting. News stories routinely refer to the attacks as "vandalism," and opinion pieces on the topic have been critical. "There's nothing wrong with peaceful protest or with insisting that troubling eco-questions be answered," declared a *Boston Globe* editorial. "But slashing an experiment and attempting to stop science is the height of ignorance." *The Sacramento Bee* editorialized, "A technological revolution like this can't be kept on course by masked fools with scythes." The problem is that, aside from a few sentences in *The Washington Post* and *Newsweek* and a 150-word item in *The New York Times*, the national press has acted as if the problem doesn't exist.

Still, there are at least a couple of reasons to believe that the crop busters will be defeated.

First, it may not take much for crop growers to resist cowardly groups like Seeds of Resistance. When a call went out over the Internet for a "Day of Action" on October 27, the would-be Transgenic Tet Offensive resulted in but a single act of vandalism. Apparently a little heightened security was enough to keep the self-styled "guerrilla gardeners" at bay. The American vandals know that, unlike their European counterparts, if they're arrested they'll go to jail, not Tanzania.

Second, to use the groups' own analogy, history shows that terrorism is a desperation tactic of guerrillas who've abandoned hope of winning the "hearts and minds" of the people. As a *Portland Press Herald* put it, "Seeds of Resistance has unilaterally decided that there is 'absolutely no benefit to humanity' from the corn its members destroyed. How do they know? By turning to vandalism, they destroyed the chance to learn."

That's the whole point. The eco-terrorists know that just around the corner is the second wave of biotech foods, from which consumers as well as farmers and the environment will benefit. They know that pressure will build in the Third World for crops to relieve malnutrition problems that lead to crippling, blindness, and early death. They know that when that happens, they will not be able to win the ensuing war of ideas.

Michael Fumento (mfumento@compuserve.com), a senior fellow at the Hudson Institute who specializes in science and health issues, is writing a book on advances in biotechnology. His most recent book is The Fat of the Land: Our Health Crisis and How Overweight Americans Can Help Themselves *(Penguin USA).*

Unlocking the Cells

DNA technology frees the innocent as well as convicting the guilty.

By Ronald Bailey

The impeachment of President Clinton underscored the growing importance of DNA evidence in criminal investigations. If it weren't for the telltale stain on a certain blue dress, the president might still be insisting that he "never had sexual relations with that woman, Ms. Lewinsky."

DNA testing was first used in Britain in 1986 to prosecute serial rapist and murderer Colin Pitchfork. Today, DNA testing is regularly used to convict criminals, much as fingerprints have been for many years. "No other form of evidence for identifying human beings has gone through such a rigorous scientific and legal validation as DNA has," says Christopher Asplen, executive director of the National Commission on the Future of DNA Evidence, a panel of expert advisers set up by the U.S. Department of Justice. "Now it's the most reliable evidence we've got."

DNA testing is a powerful way to identify people because nearly every human cell contains it, and each person's DNA is unique (except in the case of identical twins). In 1998, the Federal Bureau of Investigation created the National DNA Index System (NDIS), which links the DNA databases of 18 states so far. Eventually, all 50 states are expected to participate in the NDIS. These databases currently contain the genetic profiles of some 210,000 criminals and are expanding rapidly.

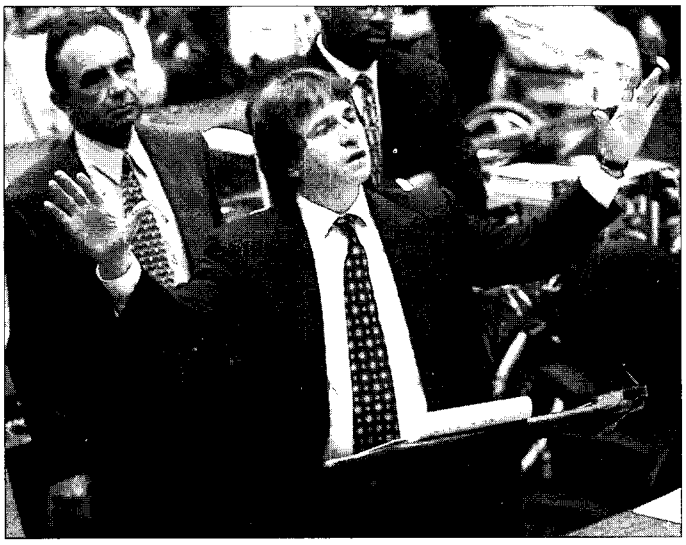
The profiles are based on DNA samples collected from people who have been convicted of murder, manslaughter, rape, or aggravated assault. Some states, such as Virginia, require that all convicted felons provide DNA samples for profiling. The databases are far from complete. Paul Ferrara, director of the Virginia Division of Forensic Science, estimates that the DNA of 1 million felons nationally should have been collected but has not been and that half a million samples that have been collected are still not profiled.

Despite these shortcomings, the databases have dramatically proven their value, solving scores of old murder and rape cases by matching DNA evidence from those crimes to DNA profiles. Florida claims to have made some 200 "cold hits" using the databases, and Virginia reports 78. A "cold hit" occurs when police who have no leads find a suspect by checking the DNA from a crime scene against the DNA profiles in the databases. Great Britain was an early innovator in DNA profiling, and British police claim to solve 300 to 400 crimes per week using DNA databases. DNA databases are effective because many criminals make a career of crime: In two studies, one in 1991 and another in 1995, political scientist John DiIulio reported that, based on interviews with prison inmates, they had committed an average of 12 crimes in addition to the ones for which they were caught and convicted.

Various types of DNA fingerprinting have been developed since the mid-1980s, but state-of-the-art DNA profiling depends on what are called "short tandem repeat" polymorphisms (STRs). STRs are segments of DNA that show considerable variation between individuals. Criminal investigators have adopted a standard using 13 STR core loci for identifying genetic differences between people. These loci are not genes but areas of "junk" DNA found in all human beings. Testing one locus gives a 1-in-500 chance that a particular sample of DNA came from a particular individual. Testing all 13 loci changes the odds to 1 in 82 billion. At $50 a profile, STR profiling is significantly cheaper than earlier technologies.

DNA testing is also a powerful tool for exonerating people who have been imprisoned for crimes they didn't commit. In September, the National Commission on the Future of DNA Evidence released a report, *Postconviction DNA Testing: Recommendations for Handling Requests*, addressing such cases. "Commission members have an absolute sense that every single day that some innocent person sits in jail is too long," says the DOJ's Asplen.

The commission's report outlines a process by which prosecutors, defense attorneys, and judges can evaluate requests by inmates for postconviction DNA analysis based on the likelihood that such an analysis, had it been available at the time of conviction, would have changed the verdict. The report recommends that prosecutors and judges, if they can, waive the time limits on mo-



Genetic Winner: The Innocence Project's Barry Scheck cross-examines a witness at the O.J. Simpson double-murder trial in 1995.

AP / WIDE WORLD PHOTO

tions for a new trial based on newly discovered evidence of innocence. States established such time limits because evidence deteriorates, memories fade, witnesses die or move, and courts should not waste scarce resources on retrying old cases. Moreover, many states mandate the destruction of evidence after a certain period of time.

"The biggest problem with the commission's recommendations is that they are only recommendations," says defense attorney Peter Neufeld. "Prosecutors don't have to follow them if they don't want to." Neufeld and Barry Scheck, the DNA experts for O.J. Simpson's defense team, founded the Innocence Project in 1991 at Yeshiva University's Cardozo School of Law. The Innocence Project focuses on using DNA evidence to help inmates exonerate themselves. So far 65 inmates nationwide have been freed using DNA evidence, usually in cases where DNA testing technologies were not available at the time of the original trial.

Neufeld bases his concerns about whether prosecutors will follow the commission's recommendations on his experience that in most of the cases taken on by the Innocence Project, prosecutors refused to consent to DNA testing. Neufeld estimates that thousands of prisoners might be exonerated if DNA evidence were available for testing. But there is no biological evidence to evaluate in 70 percent of the cases initially reviewed by the Innocence Project. Nevertheless, Neufeld says they have a backlog of 1,000 cases, of which only 200 are being actively pursued.

Right now only two states, Illinois and New York, have laws giving prisoners the right to postconviction DNA analyses. Neufeld and Scheck propose that the federal government or every state adopt legislation that would permit postconviction DNA testing that would be paid for by the government.

Also, they want laws enacted that would allow access to evidence even for inmates who do not meet the threshold criteria for states to pay for DNA testing but who are willing to pay for the DNA tests themselves. Also, they want no time limits on new trials in which new DNA evidence could exonerate an inmate. Neufeld and Scheck recommend that biological evidence from a crime scene be preserved at least as long as an inmate convicted for that crime on the basis of that evidence is in prison—a point on which Virginia's Ferrara concurs.

As DNA testing improves, other questions will be raised. Now only convicted felons must submit to DNA testing. In the future, will police be able to require suspects and arrestees to provide DNA samples for matching against crime scene evidence and DNA databanks? Ferrara analogizes this use of DNA testing to fingerprinting. Today, arrestees must provide the police with their fingerprints. Someday they might have to hand over blood or other tissue for DNA sampling. Soon, Asplen notes, DNA testing technology will be able to use the cells left behind by ordinary fingerprints for DNA profiling.

Since it doesn't test for genes, STR profiling can only identify people and does not provide any genetic information that might be of interest to, say, health insurers. But even after the STR profiles are obtained, Virginia and other states keep the biological samples taken from felons. It is not too hard to imagine future researchers trying to gain access to those samples in order to prospect for genes that predispose people to violent or otherwise antisocial behavior. Also, British investigators are beginning go beyond simple STR identifiers to look for DNA markers in genes for eye color, hair color, and race that would help them construct fuller physical profiles of suspects.

Britain and France often use "voluntary" mass screenings to find criminals in a community. For example, in 1996 the murderer of a 15-year-old girl was caught through a mass screening of 2,000 local men in Cardiff, Wales. For those who say it can't happen here, Neufeld reports that a Florida investigator recently told him of a murder case in which 250 men were asked to provide DNA samples voluntarily. The investigator told Neufeld, "Not a single man we asked refused to provide a sample." The murderer was caught—not through DNA screening but when he tried to kill another victim.

In the science fiction movie *Gattaca*, which portrays a dystopian world of genetic haves and have-nots, the hero is nearly caught by the gene police when he leaves a stray eyelash in the wrong place. This scenario is not so far-fetched, since everyone is constantly shedding DNA-containing material such a dry skin cells, hair, and saliva. Improved DNA testing techniques could use this type of everyday DNA evidence to keep track of people.

Clearly, DNA testing is an increasingly powerful forensic tool, and we should be on constant guard for potential abuse of it by the authorities. But the exoneration of convicts based on DNA evidence shows that the technology can also be used as a check on government, and proposals for public financing of these tests make sense. Indeed, the federal and state governments should be eager to pay for DNA testing and analysis to be sure that no innocent person has been wrongfully imprisoned. After all, if the government isn't about rendering justice, what is it about?

Ronald Bailey (rbailey@reason.com) is REASON*'s science correspondent and the editor of* Earth Report 2000: The True State of the Planet, *published by McGraw-Hill in November.*

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Electric Visions

Unleashing the market for power

By Ryan Oprea

Electricity isn't just one of the nation's largest industries. It's one of the most heavily regulated. More than a century's worth of federal, state, and local laws have straitjacketed it, stifling innovation, raising prices, and wasting resources. The industry that fuels the rest of American industry is in dire need of reform.

Congress recognizes this. But a lot of special interests are at work in Washington, pushing different ideas about what that reform should look like. Under America's complex regulatory regime, electricity has become a labyrinth of public and private sub-industries, each governed by different rules, each with its own interests—and each with its own lobby.

Outside the industry, several more lobbies have joined the debate, from environmentalists to retirees. The North American Electric Reliability Council, for instance, creates voluntary rules for the industry, and would like to make them mandatory. There's even a National Alliance for Regulatory Utility Commissioners, to represent state regulators' interests.

With so many voices, it can be difficult to discern the real issues at stake. But there is general agreement on—or reluctant acceptance of—one point: Like it or not, competition is already coming to the industry.

Small, entrepreneurial companies have found tiny cracks in the regulations where they can innovate and compete. Plug Power, for instance, is developing a fuel cell technology that could allow homes and small businesses to produce their own energy. Trigen Energy has found ways to dramatically improve efficiency in power production—and claims a competitive industry would have every incentive to follow its lead. Such enterprises represent the possibilities of a dynamic, less regulated marketplace. It's unclear, though, whether there is room in Washington for a bill that would unleash all the creativity of companies like Trigen and Plug.

It's not as though the electricity market has never been competitive before. For a long time, policy makers assumed that it was a natural monopoly—that only one firm could operate profitably in each market. But over the last two decades, Burton Behling, Harold Demsetz, and other economists have discovered that the early industry was remarkably competitive. In the first 10 years of the century, in cities across America, consumers could choose from more than one electric company. In that environment, production quadrupled and prices fell 26 percent.

It's not as though the electricity market has never been competitive. In the first 10 years of the century, consumers could choose from more than one electric company. In that environment, production quadrupled and prices fell 26 percent.

In 1907, with competition eating into their profits, the oldest firms began lobbying to consolidate the industry. States passed laws guaranteeing exclusive franchises to those utilities and propping up their prices. Unnaturally large holding companies began to develop, channeling their monopoly profits (as high as 2,000 and 3,000 percent in exceptional cases) into other industries and spreading into other states (thus partially shielding themselves from state takeovers).

The federal government responded by passing interstate legislation. In 1935, the Public Utility Holding Company Act prevented utilities from entering other energy-related businesses and severely restricted their capacity for growth. (A 1995 study by Paul Carpenter and Frank Groves of the Central and South West Corporation estimated that this law costs the industry $3 billion to $12 billion each year.) Also in 1935, Congress established the Federal Power Commission, later reorganized as the Federal Energy Regulatory Commission; to this day, its complex rate and merger regulations delay and contort changes within the industry. Finally, the feds instructed the Army Corps of Engineers and the Bureau of Reclamation to erect the Tennessee Valley Authority and five Power Marketing Administrations, offering tax-subsidized and regulation-exempt power to different parts of the country. That, combined with even more stringent regulations on the state level, is how the industry was regulated until the 1970s, when a new law inadvertently opened the door to change.

In the late 1970s, the new Department of Energy was eager to develop environmentally sound, renewable resources. To that end, in 1978 Congress passed the Public Utility Regulatory Policies Act (PURPA), which required utilities to purchase a portion of their electricity from environmentally friendly producers.

At that time, the industry was dominated by huge, vertically integrated firms. These companies owned electric generation plants, vast networks of electric lines (known in the industry as the transmission grid), and local distribution facilities; they produced, moved, and distributed electricity in one bundle to consumers. PURPA forced those utilities to let small, independent nonutility generators sell energy to other producers over the transmission grid. Suddenly, hundreds of companies could produce and sell their electricity in the wholesale market.

PURPA caused a number of problems: It gave states the power to set prices, for

example, and it saddled many utilities with incredibly expensive long-term contracts. But its most notable (and unintended) effect was to show the government that wholesale competition was possible. In 1992, Congress passed the Energy Policy Act (EPAct), which allowed the Federal Energy Regulatory Commission to open wholesale markets to a wider array of companies. In response, the commission adopted Orders 888 and 889, which required utilities owning transmission lines to provide open access to all electricity generators. New firms flooded the market, and a new class of middlemen, known as power marketers and power brokers, arose to sell electricity from generators to local distributors.

Partly because of the new competition and partly because of changes in technology, such as the advent of the natural gas turbine, the underlying structure of the market began to change as well. Economies of scale came full circle: It was now as cost-effective to run small on-site or local generators as to run large regional ones. The notion that the market would always be dominated by huge, consolidated monopolies began to unravel. Businesses and legislators began to wonder if competition could thrive in the retail market, too.

The states have more regulatory authority in this industry than the feds do, and so far they've taken the lead in reform. But while 23 states have begun the process of deregulating or reregulating electricity, only five have actually passed legislation. Congress still has to decide whether the states should keep leading the way in restructuring the industry or whether the feds should step in.

On Capitol Hill, the buzzword of the day is *competition*, a term that's often used rather nebulously. Almost everyone agrees that competition is possible and that it would be good. But what it means is less certain, and that's the core issue in the debate.

Congress faces roughly three options: deregulate, reregulate, or let the states decide.

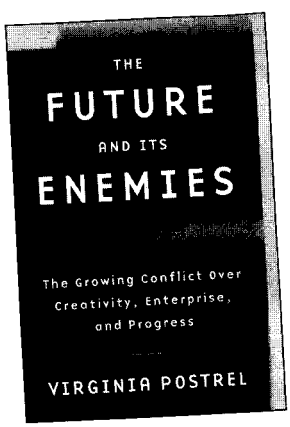
Predictably, most of the proposals favor reregulation. Such plans would institute "open access" laws, requiring the established utilities to let all generators sell electricity over their transmission wires. Whereas past open access legislation, such as PURPA and EPAct, allowed generators to sell their electricity to other power suppliers, the new proposals would let generators sell their electricity directly to consumers.

Such plans require a huge new regulatory mechanism to ensure that the generating companies are being allowed to compete. Many of the proposals essentially call for regulators to take over existing transmission facilities and run them on a "fair and unbiased basis." Others call for "functional unbundling," which would make it illegal for vertically integrated firms to produce, transmit, and distribute electricity in one package.

Open access is supported by manufacturers, who would benefit—especially in

"Brilliant"

—James K. Glassman, *The Washington Post*



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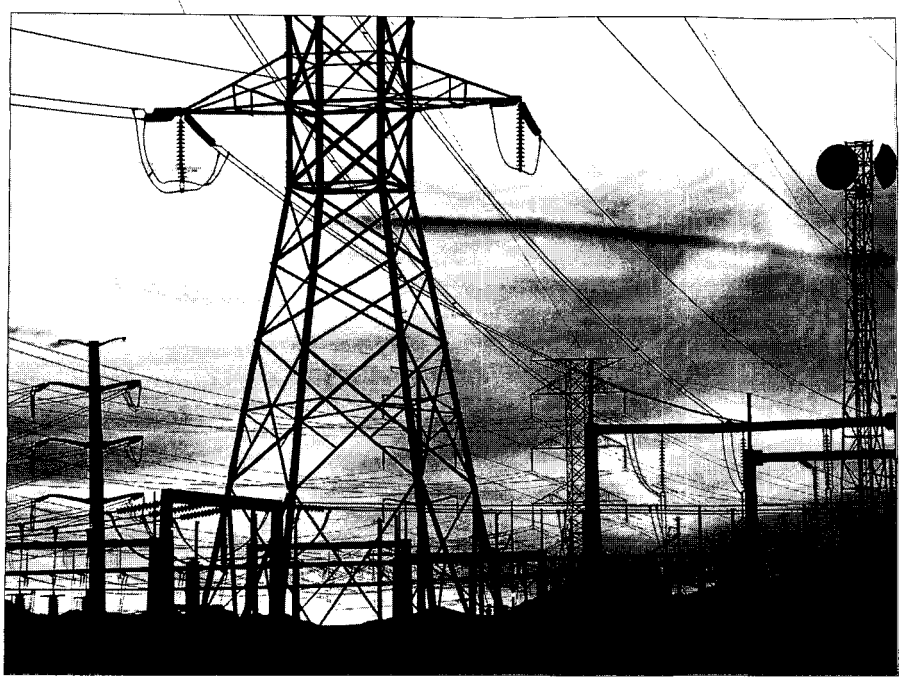

Grid and Bear It: Vested industry interests and public-interest advocates don't like it, but deregulation would cut costs to consumers.

the short run—from dropping prices. It is also popular with federal regulators, who fear that the transmission grid is still a natural monopoly and that vertically integrated utilities would have no incentive to let other firms use their wires. Alan Richardson of the American Public Power Association voiced this fear in his congressional testimony: "Competitive markets do not require heavy regulatory or antitrust scrutiny. But we do not now have an effective and efficient market in electricity. If Congress decides to remove all constraints on these dominant market participants, the market won't determine its future—the current monopolists will."

Another concern is that deregulation, by removing the government's overseers, would lead to lower reliability. Many fear that a deregulated industry would ignore rural customers.

Reregulation is understandably unpopular within the industry. The Edison Electric Institute, which represents the investor-owned utilities that own 75 percent of the transmission grid, naturally opposes any statute that would wrest control of the grid from its owners. Recognizing that some sort of federal legislation is coming, Edison has pursued a strategy of delaying the inevitable. Instead of arguing against open access legislation, Edison has suggested that broad reregulation decisions should be left to the states.

The American Public Power Association, representing the state-owned utilities that compete with Edison's constituency, agrees, though for different reasons: Although it supports open access, it is reluctant to let decision-making pass from state to federal regulators. Most state legislators and regulators concur, arguing that the federal government should simply make it easier for states to enact their own legislation. One way to do this to eliminate laws, such as the 1935 Public Utility Holding Company Act (PUHCA), that interfere with interstate trade.

But whither deregulation? The vested industry interests don't like it: They'd much rather keep the status quo and its guaranteed monopoly profits. Public-interest advocates don't want to risk releasing power to the monopolies built up by past legislation.

Even groups that generally favor less regulation, such as the Heritage Foundation, worry that, in the absence of government oversight, the owners of the transmission grid will stifle competition. Few in Washington like the idea of completely deregulating electricity.

But some do. Perhaps the most notable is Wayne Crews, an economist at the Competitive Enterprise Institute. Crews became a well-known player in the debate in 1998, when he put out a joke press release claiming that he had built a tiny generator on his desk and personally wanted access to the transmission grid. "The pervasive thinking among so-called reformers is that just because somebody spins magnets, they have a right of access to utility wires property," the press release announced. "Well, we're tired of fighting that idea. We want in on some of this money."

The prank communicated Crews' view that "the mere act of generating electricity does not create a right to force someone else to deliver it." According to Crews, what really hampers competition are the exclusive franchise rights the government gives to selected distributors. Abolishing those would open up the market and allow firms to innovate.

The deregulationists strongly dispute the idea that the transmission grid is a natural monopoly. Under deregulation, they argue, those who now own transmission wires would *not* monopolize the market. New entrants would build overlapping wires instead, allowing competition to thrive. After all, that's what happened in other industries with expensive transmission facilities, such as phone lines and railroad tracks.

Electricity, they add, is undergoing a sea change. Regulators assume that huge, centralized generators will always move power over vast distances to distributors, which will always transmit it to homes and businesses. Regulation has preserved this model, and reregulation would do the same. But in the least regulated corners of the market, innovators like Plug Power are developing technologies that would do away with the need for a transmission grid altogether.

According to RKS Research & Consulting, the industry is undergoing a "major shift from the model of central station plants and poles and wires to a new paradigm of small decentralized power and networked control systems. The shift could rival the change in computing from the mainframe to desktop and network server in social and economic significance." If this is so, reregulation would only get in the way.

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Any bill that passes the House of Representatives will be a compromise. Whatever bill is passed will probably repeal both PUHCA and PURPA, standardize technical specifications, and allow tax-subsidized companies such as the co-ops to sell electricity on the national transmission grid. It's also likely to set up Regional Transmission Organizations, which would expand the feds' power over the transmission grid. A Senate bill being prepared by Frank Murkowski (R-Alaska) is expected to be significantly more deregulatory.

Since 1979, five major industries—trucking, long-distance telephone service, railroads, natural gas, and airlines—have been opened to some degree of competition. Most of them were at some time considered either natural monopolies or essential public services that could not be trusted to market forces. Most of the old regulations had been installed at the behest of the industries themselves, which saw them as a way to fend off competition. Before deregulation, all five industries suffered from stifled flexibility, soaring prices, and generally poorer service.

According to an oft-cited and influential study by economists Robert Crandall and Jerry Ellig, after 10 years of deregulation in those five industries, consumers saved over $50 billion. Airfares fell 33 percent, and service improved. Long-distance telephone prices fell 47 percent, and new technologies such as fiber optic networks emerged. In the natural gas industry, service reliability shot up and prices dropped 57 percent. Railroad shipping prices fell 44 percent, and productivity improved to the point where half the employees produced several times the output. In the early '90s, a study by economists at Clemson University suggested that electricity prices could drop by as much as 26 percent in a competitive environment.

Deregulation could also be good for the environment. Under the current system, stringent laws keep companies from selling the excess electricity they produce to other energy users. As a result, argues Trigen Energy President Thomas Casten, we waste two-thirds of all the fuel expended in producing electricity. "If a hospital has a generator and at some point produces an excess of electricity," he points out, "it is illegal under current law to run a wire across the street and sell it to a school." Casten and others believe that the sum benefits of deregulating and desubsidizing the electric industry would lead to an automatic, nonregulatory drop of carbon dioxide emissions to below even the Kyoto protocol's stringent levels.

What further improvements might be possible? Who knows? Most utilities run on 40-year-old technology; with propped-up prices and guaranteed profits, they have little incentive to adopt anything better. While legislators draft their bills, the industry's entrepreneurs are struggling under the old rules and slowly trying to make a revolution. But for now, a century of regulation is holding most of the industry in stasis.

Ryan Oprea (rdoprea@hillsdale.edu) is a research associate for the National Center for Policy Analysis.

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Code Breakers

The GOP has forsaken Reagan's tax message.

By Max Schulz

More than a decade after Ronald Reagan helicoptered off into the sunset, relinquishing the White House and control of a political revolution that transformed the world, conservatives and Republicans are still tripping over themselves to claim the mantle of the Gipper. GOP aspirants for every office in the land, from dog-catcher to president of the United States, invoke Reagan and claim to be the rightful heirs to his legacy.

The impulse is understandable. More than anyone else—more even than Barry Goldwater or Bill Buckley—Reagan gave shape to what is considered modern American conservatism, broadly defined as opposition to international communism and a belief in a limited government that pretty much leaves people alone. If the Republican Party is the party of anything, it is the party of Reagan.

But for all the reverential invocations of the 41st president, there isn't much fidelity to the core principles he championed, especially when it comes to taxes. It is telling that Reagan is far more warmly remembered for burying the Soviet Union than for his libertarian impulses on taxes. Years before he gained the White House, Reagan articulated his core belief on the subject in his 1964 "A Time for Choosing" speech: "We cannot have [true tax] reform while our tax policy is engineered by people who view the tax as a means of achieving changes in our social structure."

It's no wonder, then, that the conservative movement seems intellectually and politically moribund so soon after rising to electoral power in the mid-1990s. Even as conservatives wrap themselves in the mantle of Reagan, they cannot fully embrace his rejection of tax policy as a means of social engineering, perhaps because it would mean renouncing control too soon after finally grabbing it. But the result is an intellectual and political jumble that underscores the point that conservatives, like the liberals they define themselves against, are more interested in wielding power than in giving it back to individuals.

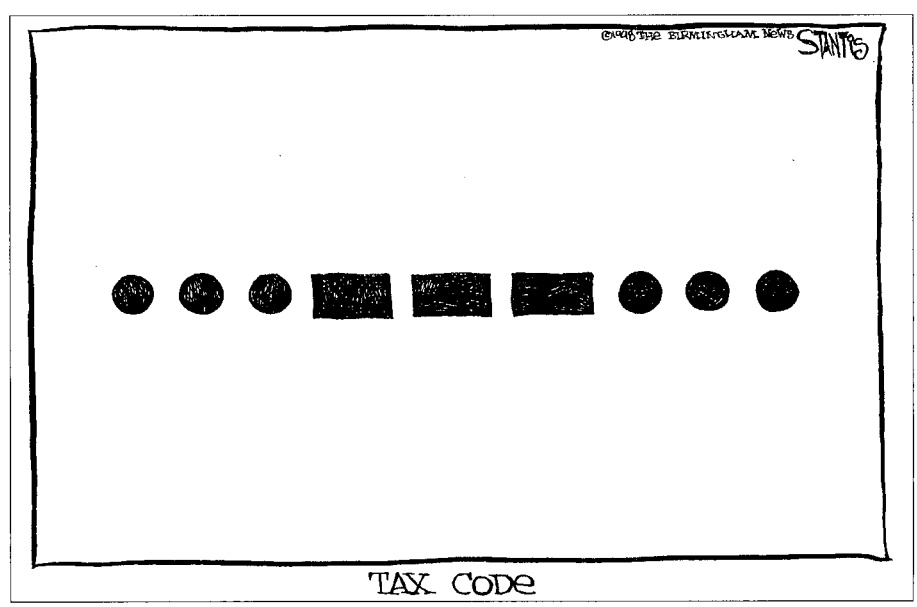
Take the tax bill the Republican-controlled Congress sent this summer to a skeptical President Clinton, who killed it with relish. Wielding his veto pen, Clinton said, "the bill is too big, too bloated, places too great a burden on America's economy...[and] would force drastic cuts in education, health care, and other vital areas." The 10 percent across-the-board reduction in personal income rates and the attempt to end the "marriage penalty" garnered most of the attention. But the GOP was equally proud of the dozens, if not hundreds, of targeted tax cuts and credits in the bill.

To gain support for the bill, the House Republican Conference, chaired by Oklahoma Rep. J.C. Watts, published a document touting its wondrous elements. Among them were tax breaks for prepaid tuition programs; for farmers; for the oil and gas industry; for the forest and timber industry; for steel companies; for employers who hire workers living and working in what are known as "renewal communities"; for building or refurbishing commercial buildings in certain "distressed communities"; for real estate; for individuals who care for elderly family members in their own homes; for medical scholarships; and for school construction. Another provision was aimed at "enhancing [salary] fairness for women." Still others extended expiring tax credits for research, welfare-to-work plans, and oil-and-gas-well investment. Provision after provision encouraged certain activities (some meritorious, some suspect) or flat-out rewarded others.

This orgy of targeted tax cuts and credits epitomizes post-Reagan Republican special-interest politics. The habit of pandering to every favored group or constituency with a tax break has the added effect of undoing the great strides the Reagan administration made toward tax simplification.

The watershed 1986 tax reform rid the tax code of dozens upon dozens of special-interest loopholes. The aim—largely successful—was to chop the Byzantine code down to size, offering the average American citizen a simpler, fairer system.

"The 1986 tax reform cut the book in half," says Tom McCluskey, a senior policy analyst for the National Taxpayers Union,



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a D.C.-based organization that lobbies for lower taxes. Recent Republican efforts have undone that work, notes McCluskey, who further argues that GOP proposals demonstrate "the hypocrisy and stupidity of complicating the tax code." He points out that the 1997 Taxpayer Relief Act added over 200,000 words to the tax code, "not to mention hundreds of thousands more to the tax regulations that implement the new law."

Having just completed a study of the 105th Congress' mania for targeted tax cuts, McCluskey knows all the grisly details. He found that roughly one in every eight bills introduced would have affected the tax code for a specified portion of the tax paying public. Bills were introduced to give breaks to limo drivers, metal workers, restaurant employees, small-time farmers,

When you start giving tax breaks for things like education or adoptions, you make it easier to give tax breaks for failed radio DJs and whaling captains.

pilots who fly to sparsely populated areas, whaling captains, unemployed radio DJs, people who employ golf caddies, casino owners, folks who live in a presidentially declared disaster area, and U.S. Olympic Committee members. These are just a handful of the hundreds of examples culled from meticulous research.

Not all of these provisions were enacted, of course, and not all were proposed by Republicans (though each of the examples above was). But to list them shows the willingness on Capitol Hill to ignore the notion that the Internal Revenue Code —like the rest of our laws—should be applied evenly. Equality before the law may be a revered principle, but it doesn't seem to extend to the tax code.

If current tax policies promoted by conservatives were limited merely to doling out booty to favored constituents, that would be bad enough. Instead, many right-wing public policy groups are teaming up with Republican members of Con-

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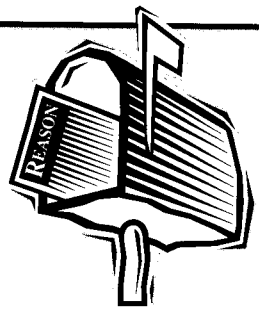

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gress to push a tax agenda that, by attempting to use the power of the state to mold society as they would like it, strikes at the very heart of modern conservatism's supposed belief in the individual's right to define and pursue happiness for himself.

The impetus has been the marriage penalty, which patently discriminates against married couples. It perversely takes a bigger tax bite out of the combined income of married couples when their income exceeds $42,350 than it would if they filed separately. This quirk of the tax code can be quite costly for a couple, and hence provides an economic disincentive to marry. *Nation* columnist Eric Alterman, for instance, has half-jokingly written that one reason he and his live-in girlfriend won't marry is because of the tax consequences.

A logical solution to the marriage penalty might be to allow individuals to file as such whether they are married or not. This would no longer punish marriage. But neither would it *celebrate* it in the tax code, which is what conservative groups such as the Family Research Council and Concerned Women for America would like to see. Self-styled pro-family conservative groups are proposing dividing a married couple's income down the middle and letting each file taxes at the half rate, regardless of whether only one spouse works.

For conservatives, who feel that the feds have slighted marriage for years, the slide from value-neutral policies to ones which promote certain behavior is easy. To counter a liberal elite they say mocks the traditional family as anachronistic, patriarchal, and stultifying, conservatives offer explicitly pro-family initiatives, favoring things such as marriage, having children, and adopting. Indeed, for conservatives, tax policy is increasingly an obvious means to such ends. It allows them to implement social policy without explicitly spending money or explicitly mandating anything, an all-of-the-credit-but-none-of-the-blame scenario a politician ought to love.

But the downside is obvious. Getting married and having and adopting children are good things, as are, in the case of the charitable gift deduction beloved by conservatives, philanthropic donations. But should it be the job of the tax code to reward virtue? Or should it be to raise revenue for the operations of government, no more and no less? Asking people who don't marry or who choose not to have children to subsidize the activities of those who do is no less unfair than asking married couples to subsidize the activities of singles.

Worse still, when you start giving tax breaks for things like education or adoptions, you make it easier to give tax breaks for failed radio DJs and whaling captains. The tax code is now larger than it was before Ronald Reagan "cut the book in half" almost 15 years ago. The positive aspect to President Clinton's veto of the recent tax bill is that thousands more words won't be added to the Internal Revenue Code and its regulations.

Of course, the left has always been quick to employ the tax code to control human behavior and to punish activities it abhors. Hence the luxury tax on cars and boats a decade ago or, more recently, the push to jack cigarette taxes up to prohibitive heights. And for decades the right and the Republican Party have defined themselves in contrast to the noxious idea that the government should compel, or even nudge, citizens to do this rather than that. But if these few years of Republican rule in Congress are any guide, then the conservative movement is finding that it is very comfortable with nudging and compulsion after all.

Republicans often lament the fact that the party likely will never have another Ronald Reagan. He was and is the GOP's ideal: popular, personable, charismatic, well-loved. But the tears they shed over Reagan have blinded them to the fact that they are forsaking his legacy rather than building on it

In terms of tax policy, Reagan's legacy has nothing to do with personality. It is about a set of principles based on the simple idea that government shouldn't be in the business of encouraging or discouraging behavior. Rather, government should ensure a level playing field on which people can live out their lives as they desire. Today's conservatives and today's GOP fail to acknowledge that these principles were a large part of why Reagan was a popular and successful leader. ◆

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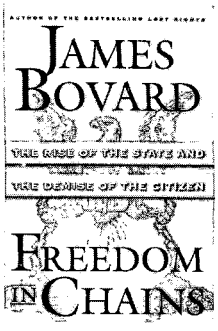
Unchaining Freedom in America

by Richard M. Ebeling



Freedom in Chains: The Rise of the State and the Demise of the Citizen by James Bovard (New York: St. Martin's Press, 1999); 326 pages; $26.95.

For more than 200 years, political philosophers have attempted to portray the state as the great god that stands above the narrow, selfish interests of the individual subjects over whom it has control. They have rationalized political power as the tool for righting great social wrongs, remaking imperfect man into a more noble creature of goodness and virtue, harmonizing the purposes of the multitudes for a higher common good, and planning the organization of society for the betterment of all. The state and its servants have been idealized as the essence of the best that is or could be in man.

But what, exactly, is the state and political power? Regardless of how political theorists and apologists may have tried over the centuries to describe it, the state and political power ultimately means one thing and one thing only: coercion. When everything else is stripped away and the state is left bare, its fundamental nature is the claim to have the right to threaten and if necessary to use physical force. And those who control the reins of political power claim the right to threaten and use force against their fellow human beings.

In his previous books, *Lost Rights: The Destruction of American Liberty* and *Shakedown: How Government Screws You from A to Z*, James Bovard itemized in depressing detail the degree to which government in modern America controls, regulates, and brutalizes the citizenry of the United States. In his newest book, *Freedom in Chains: The Rise of the State and the Demise of the Citizen*, Bovard places this growth of state power into a wider political and philosophic perspective.

Bovard shares with the Founding Fathers the belief that a political authority is necessary to serve as a guardian of the individual's rights to life, liberty, and property from the violent acts of others. But at its best, it is only an institutional device for facilitating social order, the essence of which is peaceful and voluntary relationships among the members of society. Political power is neither a holy entity nor an engine for good in any sense other than maintaining the peace among men.

To demonstrate this, Bovard documents state power in action, both in the past and in our own time. For the state to care for men under the assumption that men are unable to reasonably care for themselves, he shows that government must necessarily deny all of us the freedom to make our own decisions, whether in planning our own futures, selecting the type of work we find most attractive and profitable to pursue, or choosing the things we each conclude will provide us with the greatest happiness.

The state is always real people elected to political office or appointed to a bureaucratic position. It is these real flesh-and-blood people, not some divine beings, who then proceed to control, regulate, punish, imprison, and even kill the citizens of the United States when the government's controls and regulation are disobeyed.

How could it have happened that political power has come to be viewed as possessing the "righteousness" to dominate our lives in this way? Bovard suggests that a primary source for this dangerous attitude has been the modern concept of democracy, under which it is presumed that since "the people" elect those who rule, the elected "servants" can never oppress those whom they represent. He clearly shows that modern democracy is not a tool for controlling political power but instead an engine for special interests and ideological demagogues to gain the implements of force to use against others in the society.

How, then, do we reconcile the image that America is a land of freedom and prosperity with Bovard's view in *Freedom in Chains* that a great deal of liberty has been lost in modern America? In relative comparison with the totalitarian states of the 20th century or even the interventionist-welfare states of contemporary Europe, America still does offer a greater degree of personal and economic freedom that has allowed the creation of tremendous wealth and prosperity.

Yet in absolute terms America today is a much less free country than it was, say, 50 or 100 years ago. The degree of personal and economic liberty taken for granted in 1899 is completely lacking in 1999. And it is this absolute loss of freedom that James Bovard is reminding us of and warning us about in his important work. How much freer and more prosperous we could have been today if the ideology of statism had not triumphed both around the world and in the United States! And if we do not take heed of Bovard's warning, what freedom we still retain may be lost sooner than we think.

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Broadband and the Beast

"Open access" regulations may delay faster Internet connections.

By Ryan H. Sager

In the last few years AT&T has spent more than $100 billion building a broadband cable network capable of providing high-speed Internet access and local telephone services along with TV programming. Given such a bundle of services and the Internet's stunningly steep adoption curve, AT&T is hoping that consumers will sign up in droves. It figures that by getting out in the field first, it should be able to snag the lion's share of the nation's cable modem users.

The trade publication *Cable Datacom News* estimates that there are currently about 1.5 million such customers in the U.S. and Canada, a figure it estimates will be 15.9 million by 2003. It's hard to overstate the growing frenzy over broadband, since the technology allows users to access the Internet at speeds unimaginable with even the best 56K modem connection and is seen as crucial to the future of Web-based business.

But even if broadband is the next big thing, it's not clear yet if and when AT&T's bet will pay off in full. The company's Excite@Home service, which offers a cable modem and full Internet access for about $45 a month, has about 600,000 subscribers. But *The Wall Street Journal* and others have cast a cold eye on AT&T's cable and Internet operations, accusing them of underperforming and blaming them for the telecom giant's recent earnings woes.

If the vagaries of the marketplace aren't enough to deal with, AT&T has also picked up a few hitchhikers on its own information superhighway. Internet service providers (ISPs) such as America Online, Mindspring, and Erols are trying to catch a ride on AT&T's "fat pipe." These ISPs, which present themselves as "open access" advocates, are lobbying the Federal Communications Commission to force AT&T and other cable companies to lease them space on their super fast systems at cut-rate, regulated prices.

Pricing, not access per se, is the critical issue. Currently, most cable-based broadband providers have exclusive contracts with their own ISPs, such as Excite@Home and Time Warner's RoadRunner. When those deals expire—AT&T's runs out in 2002, for example—it's generally accepted that broadband providers will start leasing space at market rates to competing ISPs. The only question is how much it's going to cost.

Abetting the ISPs in the battle for open access are self-styled consumer advocates. The advocates claim that AT&T and other cable companies offering similar services possess an illegal monopoly and should be forced to open their systems to competitors at below-market rates. This is not a stupid argument on its face. After all, the cable companies are themselves creatures of government, built on municipally granted exclusive franchises. But the investment in broadband, like the development of the technology itself, has been market-driven, and any policy that substantially reduces the potential return is likely to slow implementation and stifle innovation. After all, why take the risks if you can't get the rewards?

How this battle plays out over the next few years will have a serious impact on how quickly the average American can expect to get high-speed access to the Internet.

Most people would agree that the preferred regulatory regime is the one most likely to provide customers with the broadest range of services and options—a criterion that undercuts the open-access position. Nothing, however, is settled, and how this battle plays out over the next few years will have a serious impact on how quickly the average American can expect to get high-speed access to the Internet. It's also an object lesson in how consumer advocates are often a consumer's worst friends.

So far, the open access crowd has found little sympathy in the nation's capital. The FCC has prudently refused to step in and regulate an industry that has barely taken shape. But a series of orchestrated local battles has already yielded some results for AOL and its allies, as they have been able to convince a handful of municipalities to implement a policy that the feds have rejected.

In early June, Portland, Oregon, became the first city to require AT&T to open its cable network to competing ISPs. AT&T promptly filed suit, but the city's decision was upheld by a federal court, and an appeal to the U.S. Court of Appeals for the 9th Circuit is pending. Other localities have ordered AT&T's pipe opened up, including Broward County in Florida, and Cambridge and Weymouth in Massachusetts. St. Louis has taken preliminary steps toward open access. In October, the city of Fairfax, Virginia, required its cable provider, Atlanta-based Cox Communications, to open up its network. Cox has so far threatened to sue the city and to refuse to provide Internet service there. (Additionally, as of press time in mid-November, a group of lawyers in Los Angeles were seeking certification of a federal class-action lawsuit against several cable companies, claiming some 500,000 consumers were being overcharged for or denied broadband access.)

The strategy of fighting local battles in the absence of federal support for open access was the brainchild of George Vradenburg III, AOL's senior vice president for global and strategic policy. A Hollywood lawyer brought in by an AOL desperate to find its home in the broad-

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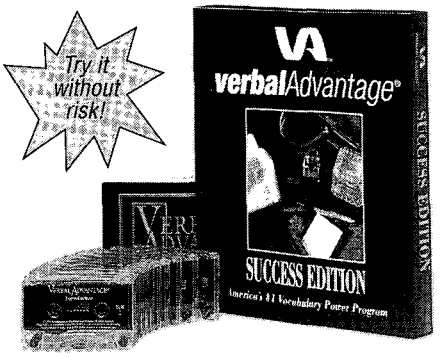

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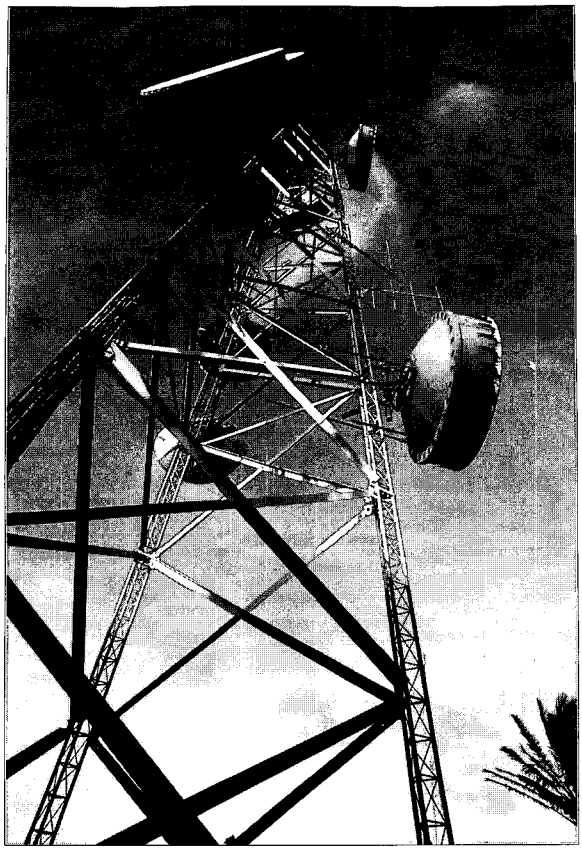
band market, Vradenburg is a shrewd tactician and a friend of such Washington notables as David Boies, the lead attorney in the Department of Justice's antitrust case against Microsoft. In November 1998, Vradenburg created the openNet Coalition, a lobbying group made up of ISPs threatened by AT&T's burgeoning high-speed capabilities. Reporting on a meeting put together by Vradenburg at Washington's Willard Hotel, *Regardie's Power*, a D.C. business magazine, outlined the group's basic strategy: to attack AT&T in the name of consumer choice.

But the open access lobby's initial bid to curry regulatory favor with the FCC failed miserably. Essentially, commissioners didn't buy AOL's claim of being shut out of the broadband market, especially since the world's biggest ISP was simultaneously cutting deals with local phone companies and satellite carriers to provide broadband access via non-cable means. Faced with a Republican Congress not likely to be sympathetic to its cause, AOL instead has taken its case to local city councils—a strategy that has AT&T hopping mad.



All Along the Watchtower: Although cable has the current advantage, wireless versions of broadband are making inroads.

"It isn't the role of government to step in and force cable companies to open up their pipes to other ISPs," says Jim McGann of AT&T's government affairs office in Washington, D.C. "We are perfectly willing to sit down with AOL or other ISPs and negotiate access on business terms." That is, of course, after AT&T's exclusive deal with Excite@Home expires. Until then, AT&T's clear message is that it will not be giving anyone access at any price, as per its contract with Excite@Home.

With the FCC solidly on its side, AT&T has little reason to negotiate. At every step so far, the FCC has supported AT&T's entry into the cable and broadband markets, even relaxing federal cable ownership restrictions in October to clear the way for AT&T's acquisition of cable operator MediaOne. FCC Chairman William Kennard has looked favorably on AT&T's expansion, at least in part because of the competition that he sees AT&T as able to bring to the local telephone market. He also does not see the broadband market as in any way monopolized, citing satellite services such as Hughes Network Systems' DirecPC and phone-line-based technologies such as Digital Subscriber Line (DSL), both of which provide competition to cable.

"We don't...have a monopoly in broadband," Kennard told a group of communications lawyers in San Francisco in July. "We have a 'no-opoly.'" Kennard sees it as simply too early to regulate, stressing that "the bottom line is that most Americans don't even have [access to] broadband."

That is expected to change in the near future, of course, which is precisely why there is such a large battle brewing now. By investing so heavily now, AT&T has managed to capture a good portion of early adopters. But whether it will be able to hold on to—much less expand—its customer base remains to be seen.

Steve Cohen, a spokesman for the openNet Coalition, emphatically denies that there's choice available in broadband access, saying, "I think the consumer should have the same freedom of choice and opportunity that they have right now with dial-up" Internet access. While such rhetoric pushes the right consumer buttons, it ignores Kennard's trenchant observation: While most Americans don't have broadband access, there is a growing range of options in the marketplace.

Though open access proponents discount non-cable-based broadband methods, many of these technologies are making significant inroads. DSL—a broadband technology that can run over upgraded traditional copper wires—used to be an expensive alternative but has come down significantly in price. U.S. West, a regional Bell operating in 14 Western states, now offers DSL Internet access for as low as $20 a month. The highest speeds cost more (about $40 a month), but even the slowest DSL is three times faster than a conventional 56K dial-up modem. In July, there were about 92,000 DSL subscribers in the U.S. That number is expected to rise dramatically over the next three years. Spurred by the threat of cable modems, all the Baby Bells have announced plans to start selling DSL, and industry analysts predict that there will be roughly 94 million DSL lines available by 2002.

There are also wholly wireless ways to get broadband access. "Terrestrial wireless," similar to cellular phone networks, is an idea that is actively being pursued by companies such as Sprint and Motorola. Sprint has already started offering a terrestrial wireless "Integrated On-Demand Network," which provides voice, broadband Internet, and video. Motorola and Sun Microsystems are teaming up to invest $1 billion in infrastructure for wireless digital networks with similar capabilities. Both of these ventures will at first be aimed at small and medium businesses but are expected to be available to residential customers within five years.

Aside from terrestrial wireless, there is also satellite. Comparable in price to DSL and similar to TV services such as

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DISH Network and DirecTV, satellite services offer residential consumers who have room for a mini-satellite dish access to the Internet at eight times the speed of a traditional modem. At this point, the dishes cost around $250, though prices are dropping regularly. Monthly service fees start around $20 and increase based on usage.

Not only are these wireless technologies viable, but for rural markets they are often the only choice. Cable tends to have weak or nonexistent market share in rural areas, and even DSL is unavailable to customers more than 18,000 feet away from a telephone company central office. Indeed, wireless technologies are so attractive that AOL has invested heavily in both, making a $1.5 billion deal with satellite provider Hughes Electronics Corp. and entering into partnerships with Bell Atlantic and SBC Communications.

So, contrary to the claims of open access advocates, the broadband market is in fact robust with prices falling and services improving. In fact, about the only thing that could go wrong at this point would be for excessive new regulations to stunt the growth of this promising new sector of the economy.

Lawrence Gasman, president of Communications Industry Researchers, a consulting firm that assesses the commercial impact of new information technologies, sees regulation as a potential disaster that would discourage investment in new and competing technologies. He points out that there are a number of unresolved issues on the technological side. No one, he says, is quite certain if the technology exists to allow more than one ISP to share the same network, and there are large questions regarding network administration. While Gasman stresses that these questions will be answered, he suggests that ham-handed regulations of access and pricing will slow down development of broadband.

"If you tell a cable or a Bell company that on top of all the problems they're having implementing a new system, they're going to have to deal with opening it to anyone else—that might be a real discouragement to creating a network in the first place," says Gasman. "The concern that there won't be enough competition is misplaced. If there's no network, there's no competition."

If the argument sounds far-fetched, it isn't. AT&T has already made it clear that those cities which impose burdensome open access requirements will be the last to see broadband. The company is not simply being vindictive, but recognizing that it will not make as much money in cities where other ISPs have a claim to the networks it is building.

"The concern that there won't be enough competition is misplaced. If there's no network, there's no competition."

As the FCC has argued in an amicus brief on behalf of AT&T in the case before the 9th Circuit, the most sensible policy in this area is to leave the market to progress on its own. Local control could only wreak havoc on an important framework that is just now developing. Maximum investment in broadband only will come when companies interested in investing in this technology can be assured that they will retain the rights to the networks they are creating.

That's especially true since, at this point, no broadband technology is truly dominant. Cable seems to have the lead for now, but billions of dollars are being poured into competing formats precisely because what will dominate is far from clear. AOL and the other ISPs in the openNet Coalition, then, haven't been shut out of the broadband market. They just dislike how much it's currently costing them to enter it. But in lobbying local governments to grab a share of the broadband pipe rather than getting on with the actual building of it, open access advocates may be slowing down the one thing they profess to care about most.

Ryan H. Sager (rhsager@gwu.edu) is a junior at George Washington University and a reporter in REASON*'s Washington office.*

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Puff, the Magic Settlement

The joy of enormous tobacco fees

By Walter Olson

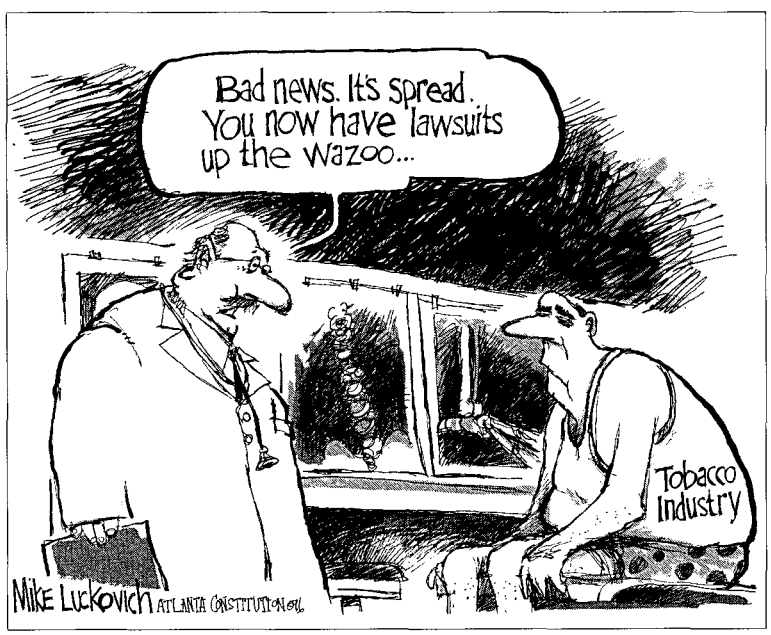
By now millions of words have been spilled on the $206 billion tobacco settlement engineered in late 1998 between 46 states and the major cigarette companies. The deal, which followed settlements with four other states totaling $40 billion, has been called the biggest privately handled redistribution of wealth in world history. It has simultaneously served as a rich source of funds for new state spending programs and as a confirmation of the newly emerging role of entrepreneurial private litigators as a fourth branch of government.

At the same time, many of the tobacco settlement's most curious features have received little public recognition. This was perhaps understandable at the time of the announcement a year ago, when most outsiders still found the settlement's terms sketchy and confusing. Since then, however, a wealth of details has emerged about how the settlement was meant to work, and does work, in practice. These details deserve a close look, if only because it's likely that the "tobacco model" will be replicated in other cases where government eyes some line of business as a source of revenue.

Start, then, with a basic question: Are the payments required by the settlement really an assessment of damages for past misconduct, or are they a tax in disguise? (Cigarette prices jumped by 45 cents a pack almost as soon as the ink was dry on the agreement and have risen again since.) "There'll be adjustments each year based on inflation," an Idaho official told the Spokane *Spokesman-Review*, referring to the state's take. "If cigarette volume goes down, our payments will go down. If volume goes up, our payments will go up even more."

That sure doesn't sound like a damage settlement. Yet the attorneys general take pains not to call what's happening a tax increase, and they have good reasons to maintain this view, one being that they plainly lacked the authority to negotiate an extra-legislative infliction of new taxes on their states' populations. So it's worth looking more closely into the question.

By its nature, a damage settlement for past misconduct could apply only to companies that did business in the past. A start-up tobacco company, or a foreign maker tackling the U.S. market for the first time, couldn't be made to pay based on the failure of U.S. companies to warn of their products' dangers in 1965 or 1980. Likewise, in a damage settlement, a company that was tiny in years past but has lately expanded could be made to pay based only on its old sales, not on any new market success it might enjoy.



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But in fact the settlement contains a series of provisions designed to make sure that companies chip in proportionally to their new, and not their old, sales. "The tobacco companies," writes Rinat Fried of Law News Network, "got the states to agree to force small companies not participating in the settlement to fund a 30-year, multimillion dollar escrow account to be used as insurance against future health-related judgments against the small companies." Contributions to this escrow account will, it seems, be set high enough to discourage small companies from going it alone.

Moreover, small companies can participate in the settlement only if they agree to keep their market share from growing more than 25 percent above what it was in 1998—either that, or pay a prohibitive 35-cent penalty for every pack they sell above that level. This quite effectively deters entry into the market by cigarette discounters who have no liability for past conduct and could therefore undercut the higher prices generated by the settlement.

The word for this process is *cartelization*, and the irony is that had cigarette executives met privately among themselves to raise prices, freeze market shares, confine small competitors to minor allocations on the fringe of the market, and penalize defectors and new entrants, they could have been sent to prison as antitrust violators—quite possibly by the very same attorneys general who sued them in this case (they'd also have faced tag-along consumer lawsuits filed by some of the same plaintiffs' lawyers). This way it's all legal.

The effect is that smokers pay generously, while the other parties get cut into a sweetheart deal: State governments quietly turn the same tobacco companies they publicly vilify into captive milch cows for future spending,

the attorneys general grab political credit, and the companies get protected from competition. And, not at all by happenstance, the private lawyers who served as middlemen will reap a vast fortune, probably tens of billions of dollars, in what are being called fees.

Traditional legal ethics has plenty to say about the role of lawyers who undertake to represent the general public, and one thing it says is that they must not overcharge, even when dealing with a government that (through foolishness or otherwise) is not watching its outlays carefully. Not very shockingly, the reasonableness of a fee depends on the amount of work done to earn it. How much work, and of what nature, did the private lawyers do in the tobacco cases?

There's no doubt that *some* lawyers representing *some* states did a substantial amount of work to research the Medicaid cases and engage in various stages of pretrial litigation—though, since only two of the cases reached trial (both were settled before a verdict), the lawyers generally did not have to worry about what is by far the biggest source of costs in an ordinary lawsuit. There were also many states like Illinois, where the law firms hired by the state, as an arbitration panel later pointed out, did "relatively little" to pursue its claims, taking no depositions and submitting no time records of hours spent on the case. Holding back on doing much work may have made sense as a legal strategy—other states were doing the heavy lifting, and Illinois could simply ride on their coattails—but it also meant the Illinois lawyers couldn't expect a huge fee, right?

"We changed centuries of precedent to ensure a win in this case," explained the president of the Maryland state Senate.

Wrong. The arbitrators decided to award the Illinois lawyers $121 million, and the lawyers reacted by complaining bitterly that they deserved more like $400 million. According to the *Chicago Sun-Times*, Illinois Attorney General Jim Ryan had "close ties" to one of the two firms he hired to represent the state.

Or consider the case of Maryland, where the state hired asbestos lawyer Peter Angelos, best known as owner of the Baltimore Orioles, to represent it. It isn't clear how much work Angelos did on the case. Yet standing on the terms of a 25 percent contingency fee contract, Angelos now says he's owed a cool billion dollars.

This isn't to say that Angelos did nothing special to advance the state's tobacco suit. His influence is widely credited for one of the most remarkable episodes of the entire affair, in which Maryland lawmakers (like Florida's before them) agreed to change the law *retroactively* to extinguish legal defenses that would have been avail-

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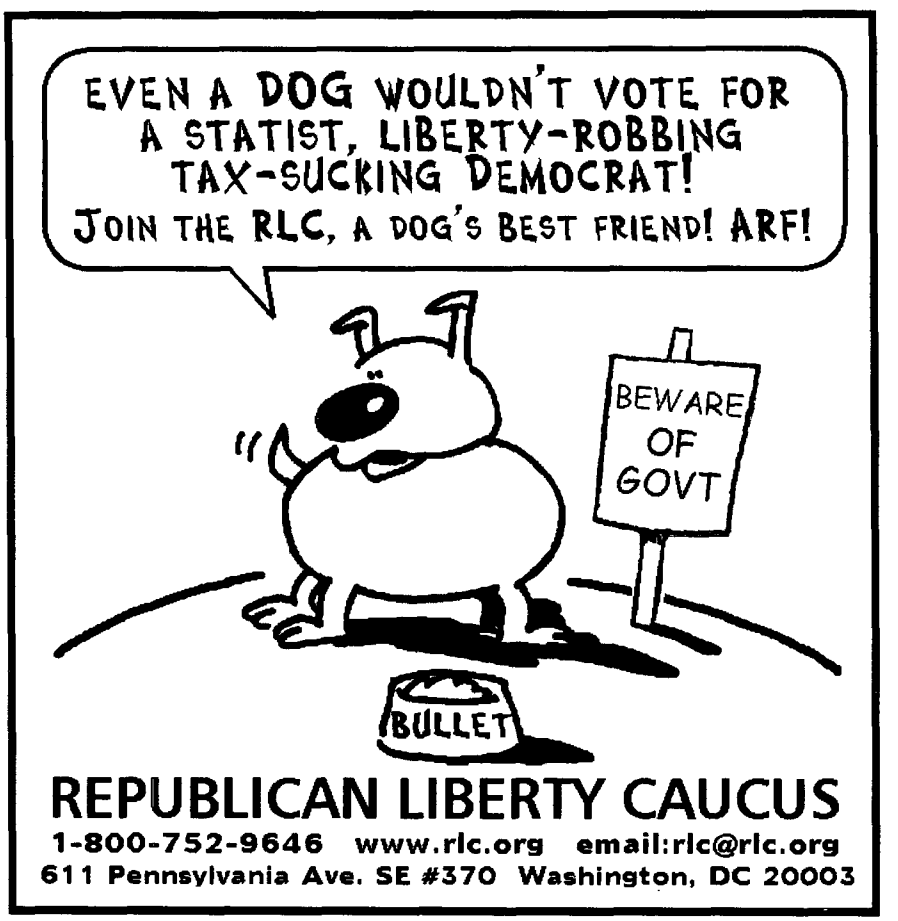
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able to tobacco companies at the time they took the actions being sued over. "We changed centuries of precedent to ensure a win in this case," explained the president of the state Senate.

As *The Washington Post* reports, Annapolis legislators have grown accustomed to "the proposals known by their yearly shorthand, 'the Angelos bill' "—legislation that the legal magnate sends over nearly every year to create some new way for him to extract more money from the parties he sues. Among the nation's most munificent Democratic donors, Angelos is, per the *Post* account, "viewed by many political insiders as the most powerful private citizen in Maryland." He sports his own personal lobbyist, glove-close relations with Gov. Parris Glendening, and a host of statehouse connections, such as with the president pro tem of the state Senate, who happens to be a lawyer with his firm.

In Massachusetts, Gov. Paul Cellucci called the lawyers' fee request "obscene," and *The Boston Globe* reported that under the eventual $775 million fee award "attorneys may be paid nearly $5,000 per hour." In Kansas, Attorney General Carla Stovall hired her own former law firm as in-state counsel, claiming she couldn't find another firm to take the work on the terms offered. In Texas, $3.3 billion in fees went to a "Big Five" alliance of trial lawyers, each of whom made *The Houston Chronicle*'s list of the top 10 political donors in the state, all Democratic stalwarts.

In New Jersey, the winning consortium of six lawyers, hatched in a "brainstorm sitting around the convention center having a couple of drinks," included five former presidents of the state trial lawyers' association, ATLA-NJ, though several of its members were very light on experience in either tobacco litigation or mass torts. The team's original proposal for representation was billed as a "public interest" proposal made through a nonprofit foundation, "but the foundation's role was later quietly eliminated, if it ever existed," reports the *New Jersey Law Journal*. Meanwhile, nearly $100,000 in campaign contributions was flowing in a six-month period from ATLA-NJ's PAC to Republican lawmakers, including $4,350 in checks written the day after the lawyers got the contract. Expected fee haul: $350 million.

Wisconsin tobacco lawyers retreated from an initial demand of $847 million in fees to accept $75 million plus $2 million in expenses, all the while battling to prevent public disclosure of their billing records (they poignantly cited "ethical issues"). When they lost on the attempt at secrecy, it was revealed that the $2 million in expenses included $7,800 for a chartered plane to fly attorney Robert Habush, former president of the Association of Trial Lawyers of America, round-trip from Florida to Washington (coach fare: $906) and a stack of limo bills typified by an $851 entry to whisk Habush from Milwaukee to Madison and back on May 5, 1997.

As for their claim of hours expended, it consisted in no small part of time spent on such categories as working the press and scoping out the governor and other political players; tasks usually entrusted to office managers, such as lining up bank accounts, office space, and furniture; fee negotiations themselves; and preparing a constitutional challenge to proposed legislation that would have curbed their fees (yep, they get paid for *that* too). The lawyers' initial demand had amounted to some $32,000 per hour, a figure one may set alongside the $20,000 a year that the median household in northern Wisconsin earned in 1990. (For the lawyers on its own payroll, the state asked $209 an hour.)

Far richer rewards went to lawyers who arranged to represent many different states at once. Perhaps the most opulent of these, the firm of Ness, Motley of Charleston, South Carolina, is likely to be in for fees exceeding $3 billion, according to *The Dallas Morning News*. Pascagoula, Mississippi's Richard Scruggs, who happens to be the brother-in-law of Senate Majority Leader Trent Lott, can expect to become a billionaire with plenty of room to spare. (A competitor of Scruggs' who said he didn't want to get "out-brother-in-lawed" cut in as a tobacco suit participant President Clinton's brother-in-law Hugh Rodham, who used his entrée to the White House to call his famous relative's attention to the issue. Rodham has now popped up to assist lawyers suing the gun industry, though he told *Time*, "It was totally unforeseen, when we joined...that there would be any connection with politics.")

Since contingency-fee law enforcement worked so well in the tobacco case, a veritable gold rush is on to sign up more governmental clients, who will delegate more and more powers to the new Fourth Branch.

Not long ago, both public sentiment and ethical authority rejected the idea of letting persons clothed with the coercive authority of government use that power to grab instant wealth for themselves by taking a share of the wealth they expropriated. Memories lingered of the evils of "tax farming," in which emperors managed to call forth the most conscienceless class of tax collectors imaginable by according them a share of the funds they extracted from a helpless populace. On a more mundane level, all agreed in deploring occasional reports that rogue police departments were giving traffic cops a share of the proceeds from tickets they wrote. Even when modern forfeiture laws arose with their many evils, there was at least the consolation that the police chiefs and prosecutors were not supposed to convert any of the seized booty to their own personal account.

Now, contingency-fee law enforcement having worked so well for its practitioners the first time out, a veritable gold rush is on to sign up more government clients, who will delegate more and more expropriative powers to the new Fourth Branch. Gun makers were selected as the second target, and trial lawyers are now busily lining up public clients to go after a list of targets that includes lead paint makers, HMOs, latex glove makers, and many others.

Can't we find someone's brother-in-law to stand up and say it's time for this to stop?

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Not-So-Grand Inquests

By Keith E. Whittington

An Affair of State: The Investigation, Impeachment, and Trial of President Clinton, by Richard A. Posner, Cambridge: Harvard University Press, 276 pages, $24.95

Richard Posner has written a remarkably even-tempered and reasonable book about the impeachment of President Bill Clinton, a welcome contrast to the overheated rhetoric and raw emotions generated by the event itself. If you were to read only one book about the Lewinsky scandal—and really, who would want to read more than one?—this is probably the one to choose. It does not feature the salacious details or fiery calls to arms of the early scandal books, but it does offer a sober second look at the misconduct and cover-up that led to only the second presidential impeachment in American history.

Posner is both a natural and an odd choice to write such a book. In contrast to most of the instant experts who populated the television studios last year, Posner is well positioned to offer some much-needed wisdom on the scandal. A longtime member of the faculty at the University of Chicago School of Law, where he is currently is a senior lecturer, he is an extraordinarily prolific scholar and a leader in the law and economics movement that has revolutionized the law schools and public policy. Not only has he been a well-known advocate of a pragmatic approach to constitutional interpretation and law, but his many books include *Sex and Reason*. Posner is also the chief judge of the U.S. Court of Appeals for the 7th Circuit. He has kept more than a hand in the theoretical debates of legal academia since Ronald Reagan appointed him to the bench in 1981.

To be sure, public commentary on such a highly politicized and recent event as the Clinton impeachment poses some awkwardness for a sitting federal judge. Posner recognizes the ethical concerns, but he argues that the impeachment will not produce any litigation that he might hear in his judicial capacity and that the criticisms of the president have been sufficiently bipartisan to allow a judge to comment on the case without seeming overly political.

Then, too, the ways in which participants in and commentators on the impeachment inquiry misrepresented legal reasoning and the criminal justice process may impose a special obligation on a judge to speak out on this topic. A senior and respected judge has a responsibility to reaffirm basic legal principles in the aftermath of such a legal farce. We are better off for his contribution to the public dialogue.

If Posner pulled any punches in deference to his judicial position, his blows are still plenty sharp. Undoubtedly, his harshest criticism is directed at the president. Posner finds Clinton's actions in the Lewinsky affair generally troubling. But the most important contribution of the book is its careful assessment of Clinton's legal culpability as a result of his efforts to cover up the affair, and in particular to hide it from Paula Jones' attorneys and Kenneth Starr's grand jury. Posner patiently wades through what is incontestably known and what can be reasonably inferred about Clinton's actions and compares these facts to his sworn testimony in various legal actions (including his response to the congressional committee considering his impeachment). The president's crimes are not the worst one can imagine, but they are plenty bad.

If Clinton were the president of a university or a corporation rather than the president of the United States, Posner suggests, his conduct would have earned him "a prison sentence of 30 to 37 months." (One wonders how the impeachment would have progressed if this basic point had been emphasized more.) Posner is precise and persuasive in puncturing Clinton's lies and his defenders' obfuscations, and his demonstration that perjuries such as the president's are both readily proven and regularly punished in the criminal courts is an important corrective to the legal confusions fostered by the impeachment debates.

Posner is equally direct in assessing how Clinton destroyed his presidential

AP/WIDE WORLD PHOTO

Sticky Finger: Richard Posner argues that Bill Clinton destroyed his presidential credibility by baldly lying about his relationship with Monica Lewinsky.

credibility by so believably feigning finger-wagging indignation as he glared through the camera lens into the living rooms of the American public and baldly lied to them out of base self-interest, even aside from his evident willingness to take an oath to tell the truth to a criminal grand jury and then proceed to offer testimony composed of clear fabrications and obviously incredible evasions of the truth. To Posner, the president's inability to order up military strikes against Iraq and alleged terrorist targets without provoking all-too-believable charges of *Wag the Dog*–style political misdirection is the most telling indication of how Clinton had abused and harmed his office and justified an impeachment effort against him. His comparison of the president's repeated lies to the totalitarian "exhibition of power by forcing their subjects to express agreements with lies that no one believes" is particularly cutting, not only to Clinton but also to a political culture in which holding on to government power is the only objective.

Posner's critical eye falls on plenty of others in addition to the president, however. He has no time for what he calls "Clinton-haters," whose ranks he suspects include Linda Tripp, and who have irrationally accused Clinton of every conceivable charge, up to and including serial murder. He shows great professional disappointment in the attorneys on both sides of the Clinton case. He thinks the office of the independent counsel made a number of political and legal mistakes, though he ultimately defends Starr against most personal and professional attacks.

Posner does not hesitate to criticize the panel of his fellow appellate court judges that was appointed to monitor the independent counsel for not showing better political judgment in handling the case. He offers a lengthy critique of the justices of the Supreme Court, not only for getting the answer wrong in the cases that broadly upheld the independent counsel statute in the first place and that allowed Paula Jones' civil suit to move forward while the president was still in office but also for being naive about political reality and obsessed with legal technicalities. Ironically for a judge who has spent most of his career either in academia or on the bench, he calls for the appointment of more justices with prior political experience.

Posner faults the Republicans' handling of the impeachment, from the partisan procedural decisions to the hasty release of the Starr material to the disorderly management of the Senate trial. He eviscerates his fellow academics for their shallow and partisan commentary during the impeachment debate. About the only group for which he offers unalloyed praise are the reporters who investigated the Clinton story and basically got it right. (Posner is a bit too sweeping in praising "the media," for he ignores the mindless jabber of the political pundits and cable talk show hosts who dominated TV coverage of the scandal.)

Richard Posner's comparison of the president's repeated lies to the totalitarian "exhibition of power by forcing their subjects to express agreements with lies that no one believes" is particularly cutting.

Posner's early chapters, succinctly laying out "the facts" and the "violations of the law" in the Clinton case and analyzing the conduct and report of the prosecutors, are worth the price of the book by themselves. Later chapters, examining the issues of public and private morality raised by Clinton's conduct and the ways in which the impeachment inquiry played into "the *kulturkampf*," are also insightful. Posner brings an experience and clarity to the analysis of the charges against Clinton that is refreshing. Perhaps more surprisingly, he also brings a useful perspective to the moral issues surrounding the Clinton case.

Posner castigates social conservatives such as William Bennett for thinking that the president should stand as a moral exemplar or that his behavior or acquittal provides evidence of moral decline in America. Posner thinks Clinton's conduct showed important character flaws that damaged his ability to lead the nation. But he argues that, contrary to the aspirations of the religious right's cultural mandarins, "it would hardly be appropriate to punish Clinton not for violating the prevailing moral code of modern American society but for failing to comply with what a minority of Americans considered a better moral code."

The Republicans nonetheless missed an opportunity, Posner writes, for "it is on the ground of disrespect for his office and for decency in the conduct of government that the most powerful case for impeachment and conviction could have been pitched. But neither Starr nor the Republican majority of the House Judiciary Committee attempted to do this." Posner does not adhere to a narrow definition of impeachable offenses, and he does not hedge on the criminal case against the president. But despite all the talk of a holy war against Clinton, he is quite right to observe that the Republicans failed to offer a coherent image of the presidency and its responsibilities or to explain exactly how Clinton's misconduct had damaged the constitutional system. The Republicans were all too willing to meet the Democrats on their favored terrain of Clinton's "private" conduct and the criminal law. In doing so, they sacrificed both constitutional principle and political advantage.

Despite its virtues, *An Affair of State* does provoke some regrets. Posner wrote it on the fly, between the start of the House impeachment inquiry and the conclusion of the Senate trial. Although extremely readable and topical, the book is quite concerned with the debates of the moment. The author too often seems to be responding to that day's op-ed page. These are debates that Posner usually wins, but a year later the reader might wish for a bit more selectivity.

Posner never really provides a detailed analysis of the impeachment power or a firm conclusion on whether Clinton should have been impeached or removed. Given Posner's scholarly credentials, this in particular seems like a missed opportunity. Posner's conclusions about various constitutional problems raised by recent events, from the scope of the impeachment power to whether a president can pardon himself, are provocative. But the arguments are thin and the scholarship limited. Readers will learn a great deal about the

impeachment and trial of President Clinton, but those interested in the history or proper scope of the impeachment power will have to look elsewhere.

Beyond a desire to explore the intersection of sex, morality, politics, and law in the Clinton impeachment, Posner has a couple of axes to grind, and these do not provide the book's better moments. There is a prominent utilitarian streak in Posner's approach to law and economics. He has edited a volume of writings by the great judicial pragmatist, Oliver Wendell Holmes, and written a number of essays urging a more pragmatic approach to the law. As part of this offensive, Posner has been an aggressive critic of the influence of moral philosophy in contemporary jurisprudence and legal theory. The scope of Posner's indictment of constitutional theory is broad: He is as dismissive of the historical orientation of a Robert Bork or Antonin Scalia or the formalist concern with text and precedent of a William Rehnquist as the moral philosophizing of a Ronald Dworkin. In his analysis of the impeachment power or the constitutionality of the independent counsel statute, Posner is quick to dismiss original intent and legal precedent as indeterminate and irrelevant and to embark on his own political and social analysis of what really "works" and the "practical effect" of different governing arrangements. The results are rather less enlightening than his deft application of the case law regarding perjury and obstruction of justice to the president's actions.

Posner is quite skeptical of the ability of "academic practitioners of 'soft' subjects in the humanities and social sciences—subjects such as moral and political philosophy, history, and law" to help resolve issues of public policy. In his view, those academics and public intellectuals who did speak out on the Clinton affair had "rather little to say that was worthwhile." Here Posner seems more than a little unfair in his selection of targets. He gives inordinate attention to NYU law professor Ronald Dworkin's claim that the impeachment was a "kind of coup" and Princeton historian Sean Wilentz's passionate testimony at the impeachment hearings. Admittedly, Dworkin and Wilentz were prominent figures in the impeachment debates, and they have invited the type of scorn that Posner heaps on them. But does their partisan hand wringing constitute "theory's debacle" and demonstrate the poverty of "academic practitioners of 'soft' subjects"? Neither Dworkin nor Wilentz have any expertise in the constitutional theory or history of impeachments. Dworkin has spent his career on matters of interpretive theory and civil liberties. Wilentz made his name examining the social effects of early-19th-century industrialization.

One might reasonably question recent academic trends that have emphasized civil liberties and social history to the near exclusion of work on constitutional structure and political institutions, but that is not Posner's point. He does not challenge the public contributions of those scholars who actually had relevant expertise in the politics, history, and law of impeachments and the separation of powers, and his footnotes demonstrate his frequent reliance on their academic work. A possible exception is Yale law professor Bruce Ackerman, whom Posner criticizes precisely for backing away from his primary constitutional theory and advancing a novel argument about the illegitimacy of "lame-duck impeachments." At most, Posner shows the intellectual whiplash that can result when liberal academics rush to defend a Democratic president from all criticism. But he falls short when he switches from a social and political analysis of the culture war to a political criticism of constitutional theory.

Posner concludes his book on a somewhat pessimistic note. He does not think the Clinton scandals have damaged the moral fabric of the nation, but he does think the Clinton crisis exposed fundamental weaknesses in many aspects of the American establishment, from the government to the bar to academia. In hindsight, this assessment seems too harsh. The Clinton administration may have been seriously damaged by the impeachment (and probably appropriately so), but the rest of the nation seems to have survived all right. Posner himself demonstrates that the case against the president could have been handled better with only some modest adjustments of personnel and emphasis. In the end, Congress seems to have stumbled to the right conclusion, and the American people appear to be making an appropriate assessment of last year's events. The publication of Posner's astute analysis of the case against the president should speed that assessment along.

Keith E. Whittington (kewhitt@princeton.edu) is an assistant professor of politics at Princeton University and author of Constitutional Construction: Divided Powers and Constitutional Meaning *(Harvard University Press).*

Jedediah the Ironist

By Jesse Walker

For Common Things: Irony, Trust, and Commitment in America Today, by Jedediah Purdy, New York: Knopf, 226 pages, $20.00

Meet Jedediah Purdy: author, young philosopher, and this moment's media darling. He has been profiled in *The New York Times Magazine* and in *Time*, which labeled him "eloquent beyond his years." His tomelet *For Common Things* has been reviewed almost everywhere, sometimes rapturously; *The Christian Science Monitor* has called it "the kind of book one finds oneself recommending unreservedly to friends, colleagues, and neighbors." Bill Moyers has reputedly said it's the best book he's read in 10 years.

And indeed, *For Common Things* is, in its presumptuous and pretentious way, a small masterpiece: Not just bad, it is *richly* bad, a book that undermines itself so intricately and thoroughly that one simply can't take it at face value. It announces that "responsible thought must resist obscuring abstractions," yet it is filled with abstract, meaningless word clots. It spends a chapter moaning that the word *public* has

been drained of meaning, yet never, in trying to restore the term, does it distinguish the public sector from the public sphere. "We have it all in the back of our minds that our behavior is subject to psychologizing interpretation," it complains, psychologizing an entire society in the process.

There is an artfulness to this awfulness, and part of me suspects that Purdy doesn't actually exist. This manifesto against irony feels like the work of a master ironist—journalist cum fabulist Stephen Glass, perhaps, returning from retirement to spin his most amusing lie yet. Even Purdy's improbable name, part Old Testament thunder and part *Deliverance* twang, feels Glassian.

Nothing Doing: In his attack on irony, Jedediah Purdy misses the point of *Seinfeld*. The show never belittled thought, friendship, or romance, but it did belittle the empty conversations and relationships that often take their place.

And if there really is a Jedediah Purdy? Then his book is a long, failed argument for itself: an earnest defense of earnestness that serves instead as an advertisement for irony. *For Common Things* reads like a long and dreadful college application essay, gracelessly shifting from personal reflections to Big Ideas, the latter carefully attached to names that certify the author as Well-Read.

Purdy's allusions are clumsily ostentatious: Not content simply to mention the Romantic poets, for instance, he refers to "Percy Bysshe Shelley's Romantics," as though anyone who needed to be told who the Romantics were would nod at Shelley's name. At least that reference is brief. Pages are devoted to summarizing the ideas of Tocqueville, Emerson, and other weighty names, not because Purdy has a novel interpretation to offer or because they add substantially to his thesis, but because... well, I'm not sure why. Perhaps Purdy really liked that composition he wrote about Marx back at Exeter and figured he might as well drop it into his book.

Purdy dismisses the idea that human beings can transcend their limits, but is himself addicted to writing in the first-person plural. Few authors use the words *our* and *we* more frequently, and few make so little effort to justify their generalizations. "Awash in wealth," he declares, "we worry that we are required to collect our share. Our idea of success is an almost unworldly prosperity and security, our idea of failure the unextraordinary existence that most of us actually lead. We are constantly in motion, and we can scarcely be satisfied." Speak for yourself, Jed!

Where did Purdy get this impression of "our" ideas? Just 25 years old, he was raised by homesteaders in West Virginia, then left at age 14 for stints at Exeter, Harvard, and now Yale Law School. He constantly contrasts life in West Virginia with the detached materialism he sees in the rest of the country, little suspecting that there might be better barometers for the national mood than the state of the preps and the Ivy League.

For Common Things combines communitarian politics with the fashionable backlash against irony, arguing that the rise of the ironic style represents the collapse of larger personal and political dreams. The "ironic temperament," Purdy asserts, "begins from the idea that each of us should be radically independent, should generate ourselves from our own will and imagination. When that ambition disappoints, and his phrases and acts do not glisten with newness, the ironist treats his own derivative behavior with the vague contempt that a selfishly expectant parent might show toward a child who fails to perform. Refusing to take seriously such mundane things as the familiar vocabularies of thought, friendship, and romance, he stops his knowledge of them at a pointedly superficial conversance." Political irony, he adds, works the same way: When disappointed idealists discover that government cannot "change the world," they shy from public life altogether.

Naturally, Purdy never cites any ironists who are supposed to fit this mold. Indeed, while his "culture of irony" has room for figures as earnest as Tom Peters, a business writer who evinces about as much irony as Al Gore, the only actual ironist he discusses is Jerry Seinfeld—not the comedian but the character the comedian played on a television show. The real ironists involved with producing *Seinfeld*, of course, were its writers, not its characters, and only the most literal-minded viewers could mistake the series for a guide to life. *Seinfeld* never belittled thought, friendship, or romance, but it did belittle the empty conversations and relationships that often take their place.

The best irony focuses its ire on the "familiar vocabularies" of hot air—not the clichés that express ordinary hopes and pleasures, but the clichés that contain no information at all, phrases used to hide the fact that the speaker has nothing to say. If an ironist sometimes turns this fire on herself—in Purdy's words, "insisting on the inadequacy of her sentences even as she relies on them"—then that is all to the good. It would be pompous indeed to chide others for their moments of ridiculousness while ignoring them in yourself.

Purdy praises the mundane pleasures of everyday life but spends very little time actually writing about them. When, momentarily, he does—when he discusses his rural, homeschooled childhood, or relates his mother's campaign against school consolidation, or reports the damage strip

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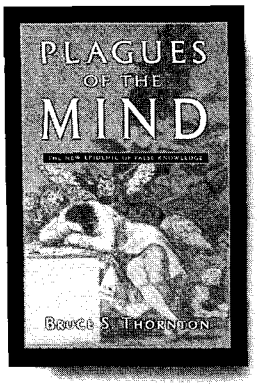

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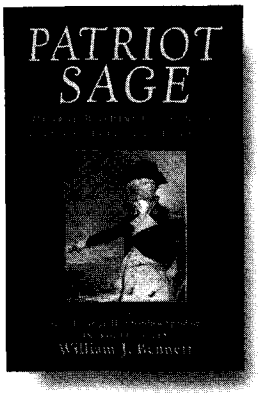

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mining has done to the West Virginia landscape—we see hints of another book. This alternate tract espouses a sane conservatism, one that appreciates the limits of politics, dismisses feel-good legislation, and understands both the importance and the contingency of tradition.

But that second book never emerges, and when Purdy offers his own comments on public policy, he rarely has anything interesting to say. His discussion of biotechnology, for instance, is a gaseous summary of points a thousand others have made, notable only for which views he chooses to ignore and for his novel distortions of Kevin Kelly's book *Out of Control.* Even the section on strip mining—the one chapter where Purdy's numbing abstractions fade into the background—has little value.

When Purdy offers his own comments on public policy, he rarely has anything interesting to say. Even the section on strip mining—the one chapter where Purdy's numbing abstractions fade into the background —has little value.

Purdy argues that you can't address strip mining, or any issue, with mere "general arguments for efficiency, or property rights, or the growth of the national economy." He's right: Property rights are an important part of justice, abstractly speaking, but one cannot fit them to coal country without paying careful attention to the region's complex, concrete history. In West Virginia, there's more than a century of local texture to bear in mind: fraudulent land transfers, violence against workers, ruptured common-law protections against pollution, and all the evasions of responsibility that bankruptcy law allows. Any a priori proposal that ignores this record is just cant.

But Purdy is making a different point. Discussing a proposed tax on carbon—and, by extension, every incentive-based approach to conservation—he argues that there is an "unreality" to such proposals, because they suggest that "we can become responsible without changing ourselves." Faced with cant, he offers some cant of his own. Oh, the irony.

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The First Web

By Bryan Alexander

The Victorian Internet: The Remarkable Story of the Telegraph and the Nineteenth Century's On-Line Pioneers, by Tom Standage, New York: Walker & Co., 240 pages, $22.00/$12.00 paper

Since the World Wide Web's birth in the early 1990s, policy makers, wonks, and writers have tried to understand it through analogies to other media. Policy mavens from President Clinton to the deposed Sen. James Exon, author of the Communications Decency Act, have sought to imitate radio's, film's, and now televisions's train of ratings, prohibitions, and litigation. Despairing bibliophiles invoke the birth of the printing press, usually with a strong sense of martyrdom, while jubilant assassins of latter-day Gutenbergs celebrate their Webified publications as the demise of ancient, unupdatable, and exceedingly bound pages. Theorists like Avital Ronell and films like *The Matrix* turn to the telephone, with its insinuating intimacy and point-to-point connections. The future's technology, or at least the present's best versions of it, are seemingly best understood by invoking mechanisms of the past.

Tom Standage's trick in *The Victorian Internet* is to reverse this gaze, using the lived experience of the Internet to illuminate an older medium: the telegraph. Although the book does offer some suggestions about what we might expect from our rewiring world, its real interest and pleasure lie in remembering the first electric network.

Standage's chronological account traces the rise (and occasional fall) of persons, organizations, and inventions working with and around the telegraph. In brief: There are several tantalizing false starts, inventive means of long-distance communication that appear then fade, including versions of the semaphore and cumbersome mechanical signals. Several mid-19th-century inventors fight both each other and their equipment's limitations to establish a working system of transmitting information electrically. Between the American and British inventors William Cooke, Charles Wheatstone, and the more famous Samuel Morse, the telegraph slowly then rapidly takes hold of the Western mind. Governments see it as a way to control armies; business interests use it to get up-to-date economic information. From 1850 to century's end, telegraphic networks link much of the world, especially the parts held by the major colonial powers.

Where *The Victorian Internet* shines is its descriptions of cultural responses to the device. From on-line (notice the term) marriages to telegraphic crime and crime-stopping, from telegraphic verse to elite societies of eccentric operators, Standage describes a cultural history largely vanished but for rare traces: Telegraph Hill, or the metaphorical use of the verb "to telegraph." As the telegraph expanded and imperfections appeared—largely the result of what we see on the Internet as network congestion—the pneumatic tube was invented to complement the wire with rapid short-range information transmission.

A distinct culture of telegraph operators developed, where speed became the ultimate measure—a fetish, even—of work and worth. New operators were ritually hazed (or "salted") with brutal speed trials and fake messages ("addressed to 'L.E. Phant' or 'Lynn C. Doyle'"); top-notch telegraphers preferred urban centers and shunned country operators. Itinerant op-

Tapped Out: *The Victorian Internet* recounts how the telephone eventually subsumed the telegraph. (Pictured: Inventor Thomas Edison sends a message.)

erators, "boomers," often appeared in different towns. Anticipating late-20th-century Net sex, operators flirted online, fell in love, even married. *The Victorian Internet* offers a stream of such cultural incidents, from the nightmarish struggles to wire the Atlantic to the problems of sending cats through pneumatic tubes. Yet this tantalizing portion of the book often promises more than it presents.

By the last years of Queen Victoria's reign, the telegraph had begun its decline from historical view. A series of replacements vied for communicative supremacy. Inventors squabbled, and squandered their belated riches. At last, Alexander Bell's telephone, initially seen as a curiosity, exploded on the world scene, subsuming the telegraph's printed, abbreviated scrip with the human voice.

Standage's book is refreshingly direct, if not academic, history. Lacking footnotes and nearly all scholastic apparatus, it is nevertheless freighted with carefully chosen anecdotes and elegant summaries. The author's reflections on the meaning of events are brisk and never intrude on the narrative's rush. In fact, no extended discussion of the Internet appears until page 205, where Standage pauses for an overview—at last—of similarities between his subject and the modern Net.

Both forms relied on war and big business for serious construction and expansion: the Cold War and e-commerce for the Net, 19th-century Great Power politics and industrial combines for the telegraph. The telegraph inspired jubilant predictions of an end to war, with the new technology primed to weaken or abolish boundaries between states; miscommunication, optimists alleged, would no longer be an excuse for conflict. The Internet stirred some to argue that an increasingly well-informed, critical netizenry would sap nation-states' justifications for war. And both provided more information, ultimately, than many consumers had been accustomed to handling, while adding a new requirement to everyday life's routines.

For example, an American entrepreneur complained in 1868: "[A merchant] has to keep up constant intercourse with distant correspondents, knows in a few weeks the result of shipments which a few years ago would not have been known for months, orders the proceeds invested.... He is thus kept in continual excitement. ...He *must* use the telegraph." Those who fail to do so risk falling behind an expanding market's leaders. Sound familiar?

Standage's account builds up a massive sense of déjà vu, drawing links between telegraphic secret coding and Internet encryption practices, noting generation gaps between older and novice users, and so forth. Yet such a strategy works too efficiently at times. We rarely get a sense of the experience of sending and receiving telegrams. Standage offers images of people using the device—perhaps most sentimentally, Morse's farewell telegram. But *The Victorian Internet* skimps on the experience of using a machine, of being immersed in its effects and beginning to work it for feedback. We can think of how intimate the telephone's whisper into the inner ear is as it slides, enclosed by a cup formed of receiver and skin, literally into our head. We can contrast that with the open space between a body and an old-fashioned radio, or the wash of light from a television, or the cavernous expanse of a movie theater. Documents of the era relate a sense of the terrific concentration needed to form and code a message by telegraph. Yet this is missing from Standage's book.

So, while he writes about marriages conducted by both the Internet and the telegraph, Standage doesn't address the effects of anonymity on the imagination. The Internet offers sex-focused chat rooms, S&M advice, and contradictory utopian promises of both bodilessness and consequence-free orgies. Surely the telegraph either lacked this aspect entirely, which is worth noting, or was yet another part of the famous Victorian sexual underworld. But Standage simply fails to acknowledge the erotic nature of either medium.

Still, his analysis is valuable. As an antecedent in the Western cultural mind, the telegraph system eerily anticipated the post-Web Internet. Ciphers and codebreakers, steady reinvention and obsolescence, government regulation and entrepreneurial frenzy, the constant dream of abolishing space and the reactionary return to localism—all have an uncannily familiar ring.

Most disillusioning, as the spread of McDonald's fails to stop either bombing in Kosovo or slaughter in East Timor, is the repeated dream of technological innovation establishing peace. The telegraph that was supposed to make borders irrelevant, end national differences, and halt mistaken rushes to battle in fact aided the conduct of war, quickening the tempo of military campaigns. As the Clinton administration continues to seek restrictions on civil liberties in the name of fighting cyberwars launched by other nations, we can remember that a new medium's effects are, to say the least, more complex than they first appear.

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Brooklyn Bums

Welfare reform for artists

By Thomas W. Hazlett

The New York *Daily News*—which touts itself as "the eyes, the ears, the honest voice" of the Big Apple—is very concerned about censorship. So when Mayor Rudolph Giuliani declared he would withdraw funding for the Brooklyn Museum of Art for rolling out the shocking "Sensation," a show featuring a portrait of the Virgin Mary decorated with clumps of elephant emissions, they explained it thusly: "SOUR ON RUDY: Poll Shows Most N.Y.ers Back Museum."

"They should be able to display whatever they want," the *News* quoted one city resident as saying. Giuliani "has no right to censor it, it's just art. One man's sense of art is another man's garbage." "It's like a preacher in a church," said another random New Yorker. "If you don't like what the preacher's saying, you can get up and leave."

Well, not this church. This friendly congregation takes its tithe right out of your paycheck, without so much as a mumbled benediction.

Why is it so difficult to explain the intrinsic link between censorship and subsidy? The *News* poll found that 58 percent of New York City residents believe no city official—not the mayor, not city councilmen—should have the power to cut off funding for offensive art projects. But the very essence of art funding is to *selectively* enhance some work to the exclusion of others. That's a reality dictated by economic scarcity. To say yes to dung artist Chris Ofili is to say no to street performer "bOINk." And when it's city cash flowing, it's city officials—through their appointed loyalists and budgetary controls—who ultimately make the call.

The *Village Voice* crowd, so vocal in support of the Brooklyn Museum's claim on the working man's taxes, embarrasses itself. The *Voice's* editor defended "Sensation," claiming that the dung was itself inoffensive and that the show was a paean to the "sacred and the profane." All right, we'll go with that on the mid-term.

But the very exercise—explaining High Art to the unwashed—was as phony as a *Village Voice* personal ad (so I hear). The liberals were only pretending to defend the work as genuinely Catholic. After all, they're not "viewpoint neutral," to use the legal phraseology. They don't lobby for public funding for born-again Impressionists from the Bible Belt.

Indeed, at "Sensation," what's the Virgin Mary doing with government subsidies? Surely it was only the dung that enabled this modern masterpiece to pass the church/state smell test. Otherwise, it would have been as reviled as a City Hall nativity scene.

Yes, but—Mayor Giuliani is a cheap, pathetic self-promoter playing to the crowd's emotions. Exactly. And here his grandstanding is an excellent exhibition of the performance art formerly known as democracy. The system doesn't always get it wrong.

So long as Rudy sticks with the theme that taxpayers shouldn't have to support what they are offended by, he's the true civil libertarian. It is a testament to the flimsy individualism affected by many ACLUers that they could be out-libertied by Giuliani, whose soul feasts on jailed defendants.

But he can't hold that single note. Like Republicans generally, the mayor eagerly cadges government dollars for galleries patronized by the upscalers who sip a lot of election-year coffee. As it is in the Village, so it is in the affluent suburbs: Art with a message is perfectly acceptable on the public tab, so long as the message is perfectly acceptable.

Even the intellectual right has turned soft on subsidies. Key right-wing thinkers have come out for censoring popular culture, and Robert Bork has brutally severed censorship from the issue of who pays. Commenting in *Slouching Toward Gomorrah* (1996) on Robert Mapplethorpe's NEA-funded "homo-erotic photos," Bork wrote, "To complain about the source of the dollars is to cheapen a moral position. They would be just as offensive if their display were financed by a scatterbrained billionaire." The moral position the conservatives would discount—apparently to zero—is that of individual liberty.

The position against public funding for the arts is marvelously libertarian, constitutional, and progressive. Art is expression. If you oppose censorship, you must oppose the handicapping of government-sanctioned viewpoints, inherent in decisions to fund this but not fund that. If you believe in eliminating welfare for the rich, then forcing the art community to become self-sustaining relieves the middle and lower classes of subsidizing what they so rarely enjoy or even understand—take it from *The Villiage Voice*!

"Scatterbrained billionaires" *should* be paying for the museums, not Joe Sixpack. The Pro Football Hall of Fame in Canton, Ohio, is private and all paid up. Why not the Brooklyn Museum?

It's a perfectly reasonable position. All it lacks is adherents.

Scatterbrained billionaires *should* be paying for the museums, not Joe Sixpack. The Pro Football Hall of Fame in Canton, Ohio, is private and all paid up. Why not the Brooklyn?

Contributing Editor Thomas W. Hazlett (hazlett@primal.ucdavis.edu) is a resident scholar at the American Enterprise Institute and a professor of economics at the University of California at Davis.

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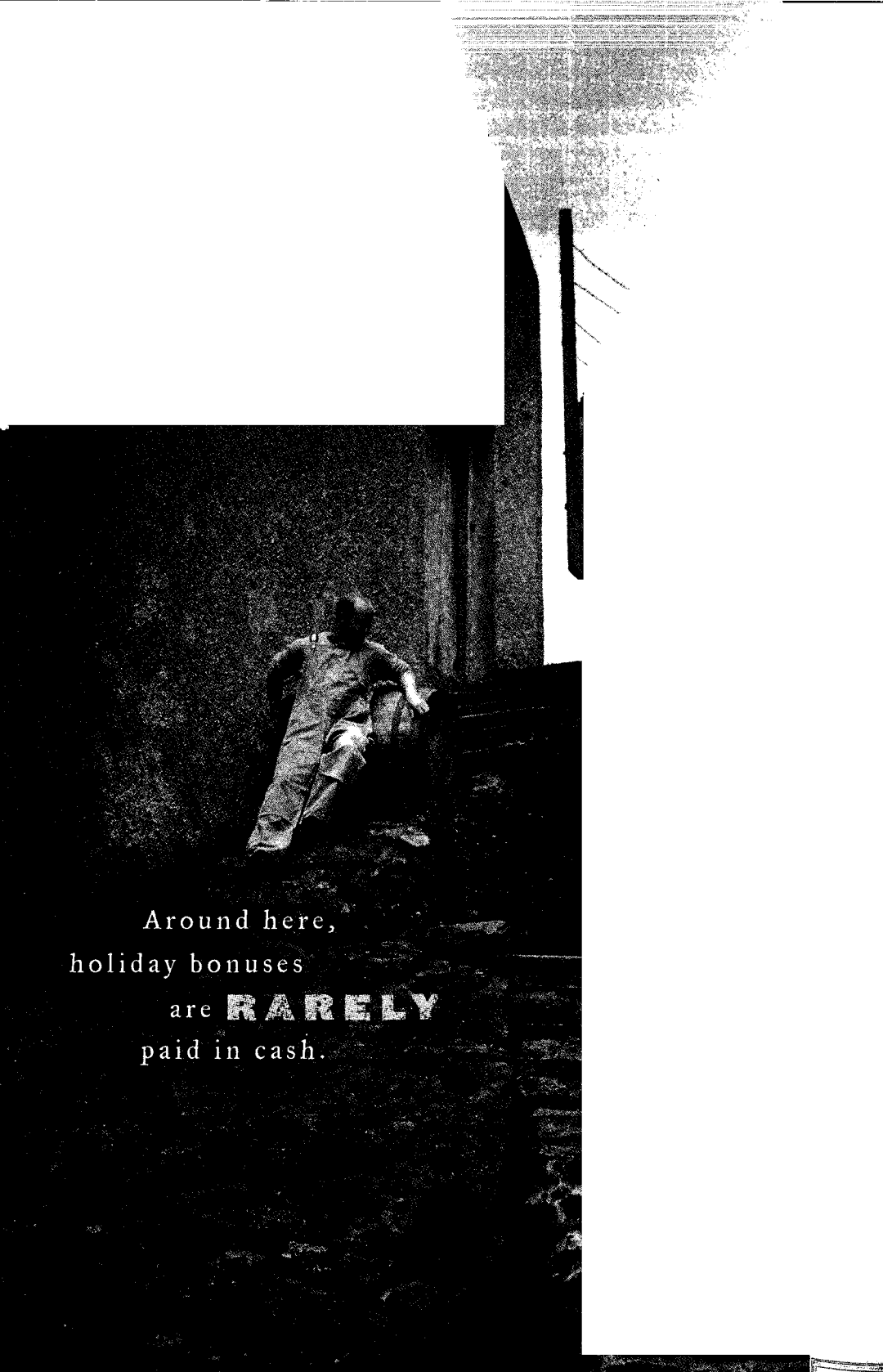
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